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In the Privy Council.

UNIVERSITY OF TORONTO
No. 44 of 1950.
-9 JUL 1953
REGISTERED
LAW OFFICES

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN

MARK T. McKEE (Defendant) - - - - - Appellant

AND

EVELYN McKEE (Plaintiff) - - - - - Respondent.

Record of Proceedings - Vol. 2

Pages 201-400

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2,
Appellant's Solicitors.

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Respondent's Solicitors.

30731

9 APR 1953

REGISTERED

LEGAL OFFICES

I

IN THE SUPREME COURT OF CANADA
APPEAL FROM THE COURT OF APPEAL FOR ONTARIO
IN THE MATTER OF THE HABEAS CORPUS ACT, REVISED
STATUTES OF ONTARIO 1937, Chapter 129 and amendments
thereto, and
IN THE MATTER OF AN APPLICATION OF EVELYN McKEE
as next friend and legal guardian for possession
of her son Terry Alexander McKee.

BETWEEN: EVELYN McKEE,
(Plaintiff) Appellant,
-and-
MARK T. McKEE,
(Defendant) Respondent.

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California? A. Yes.

Q. I take it you and Mrs. McKee are very good friends?

A. Yes.

Q. You have very great respect for her?

A. Yes.

Q. You think she is a remarkable woman?

A. Yes.

10 Q. You would do anything in your power to help her win this case?
A. Anything I think is right and just and true.

Q. Speaking about this day you went to Mrs. Ament's, did you go there after speaking to them? Did you speak to Mr. or Mrs. Ament before you went to the house that day?

A. No.

Q. Did you take the precaution of letting them know you were coming?

A. Not myself.

Q. Do you know whether or not Mrs. McKee did?

20 A. I couldn't tell you that.

A. And did you go to Mrs. Ament's house that day driving or walking?

A. I drove.

Q. In whose car?
A. A friend of ours, Mr. Stuart Goudy.

Q. What kind of a car did he drive?

A. A black Studebaker.

Q. Was he driving it? A. Yes.

30 Q. Now, you referred to visits Terry made to your house and I believe I understood you to say that Mr. Moyer always came, is that correct?

A. That is right.

Q. That is what you said? A. Yes.

Q. Were you there last Sunday when Terry paid a visit to your house?

A. Yes.

Q. Was Mr. Moyer with him?

A. No, that is the first time.

Q. Why did you tell us a few minutes ago that Mr. Moyer always came?
A. That is since the trial began, I am sorry.

40 Q. That is your explanation for that. Do you remember the last two or three visits in June when Terry went down with his brother Julian. Do you remember that?

A. No.

Q. Have you ever seen Julian?

A. I have seen him in the car when he came with Mr. Moyer.

MARIE IRENE HILLER -- Witness for Plaintiff --

Cross-Examination

IRIS LANDIS STEVENS -- Witness for Plaintiff --

Dir.-Examination

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Q. You say Mr. Moyer was present on all these occasions?

A. Yes.

Q. And I believe you also said that Mr. Moyer sat in the living-room. Do you mean he always sat in the living-room every time he came down?

A. No, but wherever we were he was always very close. If we were in the back yard he usually was out there.

10 Q. He was in the house? A. No, he would be out there and when we would be in the house he would be in the house.

Q. Isn't it true a week ago last Sunday when Terry and Mr. Moyer left you expressly asked him not to come into the house and he stayed outside while Terry went in the house?

A. Yes.

Q. He stayed out in the car? A. He stayed in the back yard that Sunday.

20 Q. He was outside at your request while Terry was in the house?

A. No, Terry visited in the back yard.

Q. Did you ever ask Mr. Moyer to stay out of the house?

A. That was the first time.

Q. Did he stay out? A. Yes, he did.

IRIS LANDIS STEVENS, sworn,

30 ---EXAMINED BY MR. BROCK:

---Q. Mrs. Stevens, where do you live?

A. San Mateo, California.

Q. Are you a married woman? A. Yes, I am.

Q. And what is the name of your husband?

A. Ralph L. Stevens.

Q. And what is his occupation? A. He is an automobile dealer, he has his own business.

40 Q. And you know Mrs. McKee? A. Yes, I do.

Q. Mrs. Evelyn McKee? A. Yes, I do.

Q. How long have you known Mrs. McKee?

A. I met Mrs. McKee in the spring of 1940.

Q. Where were you living at that time?

A. I was living in Pasadena, California.

Q. And where was Mrs. McKee living at that time?

A. Mrs. McKee was living in Azusa, I think, about twenty miles from Pasadena.

Q. You were living in Pasadena in the spring of 1940 when you first met Mrs. McKee and she was living in Azusa about twenty miles away? A. Yes.

Q. During that time in the spring of 1940 did you visit Mrs. McKee at her home in Azusa?

A. Yes, I did, a number of times.

10 Q. Who was living there? A. Mrs. McKee and seven or eight of the McKee children and a tutor, I understand, by the name of Charles Wood, and Mrs. McKee's son Jerry. I think that is all I can remember at the moment.

Q. And Mr. McKee? A. Yes, but I never saw Mr. McKee there but one time.

Q. Now you have referred to seven or eight of the McKee children. What children were they -- that is all Mr. McKee's children by his first wife?

20 A. That is what I understand although I knew Mrs. McKee quite awhile before I knew she wasn't the mother of all those children. I understood later that seven or eight of them were McKee's by his former wife.

Q. At this time did you observe the home life of Mrs. McKee? A. Yes, and I thought it most unusual and that is why I was so surprised.

Q. Will you tell his lordship about it?

30 A. She had this very lovely home, I never did count the rooms but I imagine there were 18 or 20 rooms and it was really an ideal house for a family like that.

Q. Who looked after the children?

A. Mrs. McKee did personally. Her love was with the children every time and when I was there she was always planning bathing parties and all kinds of activities and she had the girls sewing and encouraged the children in all sorts of wholesome activities.

Q. How did the children regard Mrs. McKee?

40 A. I thought she was their mother for a long time. They all called her mother, and I must say I never saw a more beautiful relationship between children and mother.

Q. Now, at that time Terry was not born?

A. No.

Q. He was born in July of 1940? A. Yes.

Q. Now, have you been at Mrs. McKee's home at any time when she had custody of Terry?

A. Yes, I have.

Q. Will you tell his lordship what you observed and saw on those occasions?

A. If I remember correctly I spent a week or so with Mrs. McKee in the summer of 1943, I believe, when she was on First Street.

Q. First Street in Detroit?

10 A. No, on First Street, and I remember her apartment there very well and Mrs. McKee is a wonderful homemaker and housekeeper and she enjoys her home and she was always busy and she loves to have her friends in and her place was always a happy one.

Q. What was the relationship between Mrs. McKee and Terry when you visited her home in Los Angeles in 1943?

A. She loves him, she always had an affection for him and did things for him.

20 Q. Now, were you present at Mrs. McKee's home in Los Angeles when the custody of Terry was handed to Mrs. McKee in July, 1943?

A. July 1st, 1943 -- well, I can't really remember. I don't know about that.

Q. Well, were you at Mrs. McKee's home when Terry was brought there at any time from Mr. McKee's custody?

A. I don't believe that I was there. I don't recall being there on the day when he was delivered but I was there during the time when she had him. It doesn't mean that I wasn't there but nothing has been said to recall it to my mind.

30 Q. You can't just recall at this time whether you were at Mrs. McKee's place or observed Terry at any time shortly after Mr. McKee handed him over?

A. Oh, I have been there shortly after she has gotten him.

Q. When was that? A. In the summer of 1945 and in 1943 I am trying to think when I went to Mrs. McKee's. I couldn't truthfully say whether that was right after she had gotten him or not.

40 Q. In 1945 how did Terry seem when you saw him after he came down to California?

A. Terry, I thought, was looking in very bad condition. He was thin and the child was extremely nervous and he was wetting his bed at that time and we all felt it was just his general nervousness and we were concerned about him.

Q. Now, do you remember seeing Terry in 1943?

A. Yes, that was when she was living on First Street.

Q. And how long after July 1st can you recollect that? Can you recollect anything about the condition of Terry at that time?

A. I can't in particular, I am sorry I can't

Q. Now then, have you been at Mrs. McKee's home in Sherman Oaks, California, recently?

10 A. Yes, I was there a week before we came to Canada.

Q. You were at this home in Sherman Oaks?

A. Yes.

Q. A week before you came to Ontario?

A. Yes.

Q. I show you Exhibit 20, of what is that a photograph?
A. It is a photograph of the building where Mrs. McKee has her present home.

20 Q. And when you were at this home in Sherman Oaks a few weeks ago, just before you came to Ontario, what was Mrs. McKee engaged in with respect to this?

A. She was just furnishing her home. She had moved into the place that was unfurnished and she was busy making drapery and upholstering the furniture and laying rugs, getting the house in shape to live in.

Q. And what sort of living accomodation is this?

A. I think it is very attractive. She has excellent taste and has lovely furnishings.

HIS LORDSHIP: What is the living accommodation?

30 A. Two bedrooms, a bath, a living-room and dinette and a kitchen.

MR. BROCK:

Q. Is there a playground in connection with this apartment?
A. Yes, there is, my little boy played there.

Q. How old is your little boy?

A. He is ten.

40 Q. Who else is living with Mrs. McKee, is her son with her still?
A. Yes, and Cynthia had gone down from San Francisco. She was ill and Mrs. McKee was looking after her.

Q. Now, in the year 1946 during the summertime at any time was Mrs. McKee at your place?

A. What was that again?

Q. In the summertime of 1946?

A. Yes, Mrs. McKee spent time in the summer of 1946

at my place.

Q. Was Terry with her? A. Yes, I believe that Mr. McKee's attorney gave permission to bring him up for a few days.

Q. Did you notice or observe the relationship between Terry and Mrs. McKee in 1946 when she visited you for these three or four days in the summer?

A. Yes, I did.

10 Q. And what was the relationship between them?

A. Well, I would say it was very excellent. The little boy is terribly fond of his mother and his mother is very fond of her child.

Q. Did she look after him and care for him?

A. Oh, yes.

20 Q. Now, you have observed Mrs. McKee and been with her considerably in these last two years, is that right? A. I have been a close friend of Mrs. McKee's and I would say since 1941 shortly after I met her we liked each other very much and have been almost like sisters and our relationship has been unusually pleasant.

Q. What is her whole manner of living at her home or when she is at your home?

A. I think I can describe that by saying that Mrs. McKee's manner of living is gracious. I think that is the word that describes the way she lives.

Q. And in her home is there cheerfulness?

30 A. Yes, Mrs. McKee is a witty person and a delightful person to be around.

Q. And what manner of teaching does she give her children or have you observed that?

A. Yes, I have observed Mrs. McKee is to my mind a very fair woman and she always teaches her children to do the fair thing and the right thing. I know she watches them very closely in their relationship with other children with whom they play and I know she is guided by Christian principles in her care of the children.

40 Q. Now, since you have been in Kitchener have you visited the home where Terry is kept?

A. We drove by there one day. I have not visited them.

Q. You drove by? A. Yes.

Q. About how far from Kitchener is that home?

A. I would have to guess.

Q. Then, we won't ask you to guess. Where is this house, is it on the highway?

A. What house are you speaking of?

Q. The house where Terry is kept outside of Lynwood?
A. I don't believe it is on the main highway. I do not know just how they call their highways here but it seems to me it was a mile or so off the main highway, and you go in about perhaps a quarter
10 of a mile on a side road.

Q. On a side road? A. Yes.

Q. And what sort of house is this?

A. Well, I just saw it as I was driving by. It looked to me part frame and part brick, a farm house.

Q. Part brick and part frame farm house?

A. Yes.

Q. And did you visit the school at which Terry attended?
A. Yes, we drove to where the school was.

20 Q. And did you know this was the school where Terry went?
A. Yes, we drove to the farm of Mr. Moses Stever and his son, I believe it was, whom we asked which school Terry was going to.

Q. And you found out from his son? A. Yes.

Q. Did you visit this school? A. Yes.

Q. How many rooms are there in this school?

A. I didn't go inside the school.

Q. How far is the school from the farm house where Terry was kept?

30 A. I believe about two miles.

Q. And along what kind of road is it?

A. Dirt or gravel, it wasn't a paved road.

Q. We will have to ask other witness in respect to that. Now, you have told us that Mrs. McKee and Terry visited you in 1946 in the summertime?

A. Yes.

Q. Now, how long did Mrs. McKee and Terry stay at your place?
A. It was a matter of days. I don't remember, I am very bad at remembering length of
40 stays.

Q. Do you remember if there was any event which caused Mrs. McKee to end her visit with you, was there a telephone call or anything of that nature? Do you recall what caused Mrs. McKee to leave? Did Mrs. McKee intend to stay a little longer than that?

MR. LOCHEAD: How in the world can this witness

know how long she intended to stay? It would only be by what she told her and that is clearly inadmissible.

THE WITNESS: I just don't recall.

---A short adjournment.

10 ---CROSS-EXAMINATION BY MR. LOCHEAD:

Q. Now, Mrs. Stevens, you have referred to the fact that when you were at Mrs. McKee's Azusa home in 1940 I believe you said there were seven or eight of the McKee children there. Is that correct?

A. Yes, I think that many were there.

Q. And do you recall whether among these children Mr. McKee's daughters Rose Marie and Jane were present?

A. I don't believe they were. I don't remember
20 them.

Q. Will you give me the names of the McKee children who were there at that time?

A. There was Muir and Julian and Mark and Peter and Cynthia. My goodness, there were so many of them. I think Charles Wood was there at that time -- I thought he was and I learned later he was not. Did I name Mark and Julian and Muir and Joanne was there?

Q. Your recollection is Rose Marie and Jane were not there?

A. No, I don't believe they were.
30

Q. Now, do you know how old Joanne was at that time?
A. Let us see, that was in 1940, seven years ago.

Q. I suggest to you she is 28 now and she was 21 then.
A. I believe that was about the age.

Q. And I suggest to you Mark is 26 now and was 19 then.
A. I think that is about right.

Q. How old was Mrs. McKee then?

A. She is 39, then seven years ago she would be 32.

40 Q. You had been there several times I believe you told us before you realized this woman of 32 was not the mother of a girl 19?

A. It was some time later I learned her age.

Q. Did she appear to you at that time to be older than 32 or younger?

A. I thought it most amazing she had a family like

that and I couldn't understand it. I remarked to a number of people about it and that was one of the things that interested me in her so much.

Q. I am trying to understand it and I would like you to help me if you can, please. My question was, it appears now that Mrs. McKee was 32 at that time. Did she seem that age or younger or older than that at that time?

10 A. I think Mrs. McKee's age is a very deceiving thing. She sometimes impresses a person as being of some years in intelligence and wisdom and sometimes appears to be very young.

Q. I suggest to you that her appearance indicates that she is substantially younger than she actually is?

A. I think that is very true.

Q. So as I said before it was some time and you had been there many times before you realized this woman of 32 who probably looked younger than that was not the mother of a girl 21 and a boy 19?

20 A. Yes.

Q. Now then, at that time you were known as Mrs. Hart?

A. That is correct.

Q. In fact I believe your marriage to Mr. Stevens is your third marriage?

A. That is correct.

Q. The previous two were dissolved by divorce proceedings?

A. Uncontested, yes.

Q. Now then, do you know that during May and June of this year evidence was being taken on these proceedings in California on commission during May and June?

30 A. Yes, I knew that.

Q. I suggest to you that Mr. Cloud who appeared as counsel for Mrs. McKee on that occasion was in touch with you in regard to that commission.

MR. BROCK: My lord, I suggest my friend should not ask this witness as to the conduct of Mrs. McKee's case.

HIS LORDSHIP: I don't think he is doing that.

40 MR. LOCHEAD: Q. Did you know Mr. Cloud?

A. Yes.

Q. Was he in touch with you in May and June of this year?

A. I don't believe he was.

Q. How did you come from California to Ontario?

A. I came by airplane to Chicago and picked up a car in Chicago.

Q. Whose car did you pick up in Chicago?

A. My husband's.

Q. And you have been here now for two or three weeks?

A. Yes, I have.

Q. Who is paying your expenses?

A. I am paying my own expenses.

Q. You paid your own transportation expenses and other expenses here?

A. Yes.

10 Q. So you could come here and give evidence in this case?

A. That is true.

Q. Are you living at the Hiller home?

A. No, I am living at the Walper House.

Q. Have you been at the Hiller home on any Sunday since you got there when Terry was there?

A. Yes.

Q. Did you see him last Sunday? A. Yes.

Q. Would you not agree with me he looks to be a very healthy boy at the present time?

20 A. His colour is very good but Terry is very thin and he is extremely nervous.

Q. His colour is very good, though?

A. Yes, I say his colour is good but he is thin and extremely nervous.

Q. Yes, I think that is understandable.

---RE-EXAMINATION BY MR. BROCK:

30

Q. You were asked about Mrs. McKee being the mother of all these children. What did the children call Mrs. McKee?

A. They all called her mother.

Q. They all called her mother? A. Yes.

Q. And you were asked about two divorce actions which you had. Were you the plaintiff in these divorce actions?

40 A. Yes, I was. My second divorce was because of medical reasons and I secured an annulment on grounds of desertion but there were medical reasons why it had to be.

JOSHUA STEVER, sworn,

---EXAMINED BY MR. BROCK:

Q. My lord, this witness I understand has not a very strong voice and if it is not so strong your lordship will understand.

HIS LORDSHIP: You can speak so we can hear?

10 A. I think so.

MR. BROCK: Q. Mr. Stever, what is your occupation?

A. Raising pigs on the farm.

Q. You are a farmer and where do you live?

A. No. 3 Moorefield.

Q. How far is that from Lynwood?

A. It would be about 12 or 13 miles.

Q. And where were you born? A. I was born in the township of Perth.

20 Q. Where were you raised, were you raised near Lynwood? A. Yes, as a boy my father bought a farm near Lynwood about two miles west of Lynwood.

Q. And do you know where Mr. McKee keeps Terry, do you know the farm where Mr. McKee keeps Terry near Lynwood? A. Very well.

Q. How far is that from Lynwood?

A. Two and a half miles.

30 Q. And with respect to this farm where Mr. McKee keeps Terry where was the farm that your father purchased when you were a young lad?

A. It was part of it, 100 acres would be right across the way from the McKee farm.

Q. It was very near it? A. Yes, the road was in between.

Q. Now, do you know Mrs. Ament? A. Yes.

Q. Are you a relative of hers?

A. She is my sister.

Q. And how old is Mrs. Ament? A. She is in the seventies, I believe.

40 Q. She is in the seventies?

A. I believe so.

HIS LORDSHIP: I think one of you told me at Kitchener she was in the early seventies.

MR. LOCHEAD: My understanding, my lord, is that she is 70.

MR. BROCK: Now, do you know Mark T. McKee?

A. Yes.

Q. And did you ever work for him? A. Yes.

Q. And where did you work for him?

A. In Port Austin.

Q. Port Austin, Michigan? A. Yes.

Q. Do you remember when you started to work for him? A. Yes, on Good Friday of 1946.

Q. That was April 20th, 1946?

10 A. I believe it was.

Q. In any event, it was Good Friday, 1946?

A. Yes.

Q. And you went to Port Austin on that day?

A. Yes.

Q. What home was it you went to in Port Austin?

A. Mr. McKee's home.

Q. And that is what is known as the summer home, is it? A. I believe so, it is practically all summer cottages around there.

20 Q. And how many rooms were in that home, about?

A. I believe about 14.

Q. And who were living in this home at that time?

A. Joanne and her three kiddies.

Q. And about how old were the children?

A. One was four and there was a little girl two, and the baby.

Q. Who else was living there? A. The housekeeper, Mrs. Grace Pipper.

30 Q. How old was she? A. I believe she would be in the seventies.

Q. And Terry was there? A. Terry was there, yes.

Q. And Mr. McKee, that is Mark T. McKee, and yourself? A. Yes.

Q. Now how long did Grace Pipper stay after you came? A. I believe about a week or ten days.

Q. Who came to take her place as housekeeper?

A. Miss Eastman.

40 Q. A Miss Eastman, and now then, you have mentioned that Mr. Mark T. McKee was there; was he there all week, would he be there all during the week?

A. No, I believe he was there about two or three days and then went away.

Q. In each week? A. I am talking of the time I went over.

Q. He was there for two or three days and then he

went away? A. Yes.

Q. How long did he stay away?

A. Oh, probably three days or four.

Q. And then did he come home again? A. Yes.

Q. How long did he stay this time?

A. Oh, I believe as usual he came home about the Thursday and would go away again and stay overnight and sometimes stay half a day.

10 Q. He would come home Thursday and stay over Thursday night and go away again? A. Yes.

Q. And when would he come back again?

A. Sometimes Saturday or Sunday.

Q. Then he would come back on Saturday or Sunday.

When did he go away following that -- I am not clear whether this is a general practice or whether what happened when you were there.

20 HIS LORDSHIP: It isn't clear to me at all. He said he was telling you what Mr. McKee did when he first was there in April and you were questioning him as though it was a general practice.

THE WITNESS: The general practice of Mr. McKee is he would get home about Thursday or Friday and stay all night or maybe half a day and leave again and come back either on the Saturday or Sunday. He was very busy.

Q. Would he go away on a Sunday night?

A. Sometimes he went away Sunday afternoon or Sunday night.

30 Q. When he would go away on the Sunday afternoon when would he return again, usually?

A. About Thursday or Friday.

Q. And during the weeks Mr. McKee would be there on Thursday night or Friday night and for a short while on Sunday, is that right?

A. That is correct.

Q. During each week? A. Yes.

Q. And stay about half a day or so when he came on Thursday night and sometimes did he wait until Monday morning to leave? A. Sometimes he would, yes.

40 Q. But that was the practice, that was the time in each week that he would be at his home in Port Austin where Terry was?

A. Approximately, yes.

Q. Now then, what did you do, what was your work at this home in Port Austin?

A. I worked around the house and garden and I

built a cottage while I was there.

Q. And did you see Terry often while you were there?

A. Quite often.

Q. And did Terry go to school? A. Yes.

Q. And where did he go to school?

A. At Port Austin, in the village.

Q. How did Terry get to school?

A. I drove him with a horse and buggy.

10 Q. And who got breakfast for you on these mornings?

A. Well, while Mrs. Pipper was there she got the breakfast and when the other housekeeper came, that is Miss Eastman, I had to get my own breakfast.

Q. What about Terry's breakfast?

A. Well, I believe there was another boy there and on different occasions when I cooked the porridge I cooked it for them.

Q. Before Terry went to school did he always have breakfast?

20 A. No, he went to school without breakfast different times.

Q. Why did he do that?

A. Well, the breakfast wasn't ready for him. I had my breakfast and went out to get the horse and get ready to go to school and the boy wasn't up when I went to get the horse.

Q. Who dressed Terry on these mornings?

A. I suppose he dressed himself and came down and I might have straightened his clothes occasionally.

30 Q. You suppose he dressed himself and you straightened his clothes up for him and took him to school?

A. Yes.

Q. And was Joanne up on these mornings?

A. No.

Q. Joanne wasn't up when Terry would go to school?

A. No.

Q. She had her own three children? A. She had her own three children in a room on the second floor.

HIS LORDSHIP: Q. What time did you go to school?

40 A. We left about 8.30, or a quarter to nine. We had two miles to drive, about two miles approximately.

MR. BROCK:

Q. And where was Miss Eastman when you would take Terry to school, did you see her around?

A. I suppose she was still in bed.

HIS LORDSHIP: Q. You didn't see her, in any event?

A. No.

MR. BROCK: Q. And what time did you go to bed at nights?
A. Oh, it was different times. For the first while it was quite late, probably eleven o'clock.

Q. And where was Terry at that time?

A. Well, he was up and around.

Q. He was up and around? A. Yes.

10 Q. Did anyone seem to be looking after him?

A. Not in particular, no.

Q. Not in particular? A. No.

Q. And at that time he was five years old, was he not?
A. No, he would be six at that time.
I believe he was six.

HIS LORDSHIP: His birthday was in July and this was April, 1946; he would be pretty close to six.

MR. BROCK: Q. Did anyone give him the love and care that a boy of that age usually has?

20 MR. LOCHEAD: My lord, surely nothing could be more leading than that. This witness has already covered the ground very thoroughly.

HIS LORDSHIP: I think if he is going to ask that he should deal with the people in the house.

MR. BROCK: I did deal with Joanne. Now, what was Joanne's attitude towards Terry?

A. Well, I don't know in what respect I should put that. She was pretty well taken up with her own children.

30 Q. She had three children of her own?

A. Yes, and she was quite busy with them.

HIS LORDSHIP: Q. Did you ever see her doing anything for Terry?

A. Once in a while.

Q. What would she do? A. She probably would comb his hair.

MR. BROCK: Q. And what was the attitude of Miss Eastman, the housekeeper, towards Terry?

40 A. Well, just an ordinary housekeeper; she wasn't paying a lot of attention to the child.

Q. She wasn't paying very much attention to the child?
A. No.

Q. Now, how long did you remain working at this house and the premises in Port Austin?

A. Two months.

Q. And why did you leave? A. Well, the meals

wasn't what they should have been.

Q. Will you explain to his lordship what you mean when you say the meals were not what they should have been?

A. Well, different times as I said I had to get my breakfast and when I came in for dinner, dinner would not be ready at twelve o'clock, it wouldn't be ready by one o'clock and sometimes it was ready at 1.30 or
10 two. On different occasions I went in and I was handed a sandwich for my dinner.

Q. Who did this to you? A. Joanne gave me the sandwich and on this same day at 6.30 I came in for supper and there was nothing ready and no sign of supper so I came in again about 7.30 and I said, "Surely you are going to have something to eat to-night".

Q. Never mind the conversation.

HIS LORDSHIP: Q. Did you get anything to eat?

A. She said she would give me a sandwich, that they
20 were having dinner at ten o'clock. I told her I had only had a sandwich for dinner.

MR. BROCK: Q. Now, did you make any complaint to Mr. McKee about this? A. Yes, I did.

Q. What did he do or say?

A. I don't know, conditions were not any better.

Q. Just the same after you made the complaint?

A. Yes.

Q. What about the children? A. I don't know
30 if they had breakfast, I wouldn't know. There was the odd time when the children were up and had their breakfast.

HIS LORDSHIP: Q. Did you give evidence at this hearing in California? A. No.

MR. BROCK: My lord, this occurred after the California action.

Q. Now, you have told us you were raised on a farm adjoining the farm where Terry is now kept by Mr. McKee or near to it, in any event?

A. Yes.

40 Q. What school did you go to when you were living on this farm?

A. To the 9th line school.

Q. Is that the school that Terry goes to now or do you know? A. I don't know.

Q. Where is this 9th line school, how did you get to this 9th line school from the place where Terry is

kept by Mr. McKee?

A. You go down a sideroad.

Q. Do you go across a track going to that sideroad?

A. Yes, you cross the C.P.R. track.

Q. Then which way do you turn?

A. You go to the 9th concession and turn left.

Q. And how far down that concession road do you go?

A. It would be, I believe, a little over half a mile.

10 Q. Pardon? A. A little over half a mile.

Q. And how far is that schoolhouse from the farm where Mr. McKee keeps Terry?

A. It is one and three-quarter miles across from one concession to another and a little over one-half a mile -- it would be a little over two miles.

Q. A little over two miles? A. Yes, a fraction over two miles.

Q. And what kind of road is this from the farm where Mr. McKee keeps Terry to the schoolhouse?

20 A. It is a gravel road.

Q. Is it a highway or a township road?

A. No, it is just an ordinary road.

Q. Is it a county road or a township road?

A. It is a township road, just a township road.

Q. And how wide is the travelled portion of this road that is a gravel road?

A. Oh, it is narrow.

Q. It is narrow, is it? A. Yes.

Q. Cars can pass? A. Yes.

30 Q. But not by staying on the gravel, could they?

A. I doubt it.

Q. So do I, I have been over it.

Q. How many rooms are in this schoolhouse?

A. There is one room.

Q. A one-room schoolhouse? A. When I was going there.

MR. LOCHEAD: My lord, I would like to know if the witness is speaking of the time he went to school.

40 HIS LORDSHIP: He said that it was one room when he went there.

MR. BROCK: Q. When was this school built, do you know?

HIS LORDSHIP: Q. How many years ago was that; when did you go to that school, how many years ago?

A. I am 63 and I was about seven when I went to that school.

Q. So it would be over 50 years ago?

A. Yes, the schoolhouse was built about 50 years ago, my father drew the stones for the foundation.

MR. BROCK: Now, do you know this farm house, have you seen this farm house recently where Mr. McKee keeps Terry?

A. I have been past it. A year ago I went out there.

10 Q. What kind of farm house is it?

A. It is part brick and there is a frame siding.

Q. Do you know how old that farm house is?

A. Oh, it was there when we moved down there and that is over 50 years ago, 55 years ago or so.

Q. It was there 55 years ago and was it a new house then?

A. No. Was it not a man by the name of King that was in it when we moved down there.

Q. It was a man named King in it at that time?

A. Yes.

20 Q. Now, how far is it from Kitchener to Lynwood?

A. It would be approximately 19 or 20 miles.

Q. And how far is it from Lynwood to this farm house?

A. Right to the house it would be two and one-half miles.

Q. Is Kitchener the nearest city to this farm house?

A. Yes.

Q. Now, do you know anything about the weather conditions between Lynwood and the farm house and the farm house and this school?

30 HIS LORDSHIP: Now, Mr. Brock, weather conditions vary from day to day and nobody can tell you what the weather conditions are. You know that.

MR. BROCK: Q. Now, did you tell us on which side of Lynwood this farm is situated?

A. On the west.

Q. And from Lynwood to this farm, or from Lynwood to this side road on which the farm is located is that a highway or is it a county road?

40 A. I don't believe it is either, I believe it is just an ordinary road, the 11th line.

Q. The road leading from Lynwood to this side road on which the farm is located is a fair road, is it not?

A. It is a fair road.

Q. Now, were you in Lynwood on Good Friday of this year, of 1947?

A. Yes, I was.

Q. And what was the condition of this road from

Lynwood to the sideroad on which this farm is located?

A. Well, I had some business near the Lynwood schoolhouse and the road was very bad.

Q. How far west of Lynwood is this schoolhouse?

A. A little over half a mile.

Q. Did you try to get further along this road?

A. No, you couldn't get further.

10 HIS LORDSHIP: On Good Friday of this year was the frost coming out of the ground?

A. No, not then.

Q. Why couldn't you get through then?

A. Too much snow.

MR. BROCK: Q. Did you notice any of the sideroads in this district, that is the sideroads, you didn't see this sideroad which Terry would have to go along but did you see the corresponding sideroads similar to the one that Terry goes along to the schoolhouse for two miles?

20 A. Yes.

Q. Did you see any of these sideroads at that time? A. Yes.

Q. Were they passable? A. Not with a car and some of them not even with a horse and cutter.

Q. Some of them weren't even passable with a horse and cutter and a sleigh? A. No.

HIS LORDSHIP: Q. You have lived up there a good many years? A. Yes.

Q. How often does that condition occur?

30 A. Very, very often, it is right in the snow belt there.

MR. BROCK: Q. And I believe you have told us that you are a brother of Wilhelmina Ament?

A. Yes.

Q. At the same time you would be a cousin of Mr. McKee's first wife? A. Exactly.

Q. What is the population of Lynwood, what is it reputed to be? A. Approximately 600, I don't know if it has grown very much since I left.

40

---CROSS-EXAMINATION BY MR. LOCHEAD:

Q. Where were you living in 1945?

A. In Toronto, I was working in Toronto in 1945.

Q. What were you doing? A. I was driving
a cab.

Q. Were you charged with and convicted of an offence
in November, 1945? A. Yes.

Q. What was that offence? A. Liquor.

Q. Having liquor in other than a private dwelling?

A. It was a room-mate of mine had liquor in his
trunk.

10 Q. What were you charged and convicted of?

A. That is it.

Q. Having liquor in a place other than a private
dwelling? A. Yes.

MR. BROCK: My friend has asked if he was tried and
convicted and that is as far as he can go.

MR. LOCHEAD: If my friend wishes us to assume it
it was a charge of murder I am quite satisfied.

HIS LORDSHIP: I think you would be better to leave
it where you have it now.

20 MR. LOCHEAD: Q. As a result of that conviction
you were fined? A. Yes.

Q. And your dwelling was declared a public place?

A. Yes.

Q. And subsequently your taxi license was can-
celled? A. That is right.

Q. Now, you have told us you are a brother of Wil-
helmina Ament. When was the last time you were in her
house?

30 A. The last time, it would be in the spring of this
year, I believe.

Q. The spring of this year? A. Yes, I
believe so.

Q. Would you be allowed in her house now?

A. Oh, yes, so far as I know.

Q. And you are also a brother of Moses Stever who
has the farm diagonally across the road from Mr. McKee?

A. Yes.

Q. When was the last time you were in his house?

A. I believe it was in the early spring.

40 Q. Of this year? A. It wasn't the early
spring, it was, let us see, I said it would be -- I
wouldn't like to say, it might have been late in the
spring.

Q. Of what year? A. This year.

Q. Would you be allowed in his house now?

A. I think so.

Q. Have you a daughter living in Kitchener and Waterloo?

A. Yes.

Q. Are you allowed in her house?

A. Oh, yes.

Q. How many daughters have you living in Kitchener and Waterloo?

A. I have only one living in Waterloo.

Q. How many in Kitchener? A. Two.

10 Q. Are they all married? A. Yes.

Q. Are you allowed in all of their houses?

A. Yes.

Q. Do you know what the expression "black sheep" means, Mr. Stever?

A. No.

MR. BROCK: My lord, I object.

MR. LOCHEAD: I submit I am entitled to go much further.

HIS LORDSHIP: I think he is entitled to go on.

20 MR. LOCHEAD: Do you know what the expression "black sheep" means? A. No.

Q. I am just asking you if you know what that expression means as applied to a member of a family? I am asking you if you know what it means or don't you?

A. No, I don't.

Q. Isn't it true most members of your family will have nothing to do with you?

A. Not that I know of. They come to see me and I go to see them.

30 Q. How much are you being paid to give evidence here, Mr. Stever? A. I don't know.

Q. You don't know? A. No.

Q. Are you going to be paid anything?

A. I got my subpoena fees.

Q. How much did you get? A. \$5.

Q. When was that?

A. It was on Monday.

Q. Monday of this week or last week or before that?

A. It wasn't this week.

Q. Was it last week?

40 A. Probably it would be.

Q. It wasn't Monday of this week, anyway?

A. No.

Q. Were you served with a subpoena? A. Yes.

Q. By whom? A. A lady I don't know brought it up.

Q. You don't know who she is or who she was?

A. No.

Q. Were you given \$5 then at the time you were served with the subpoena?

A. Yes, with the subpoena.

Q. Have you got a regular job at the present time?

A. Yes.

Q. What, looking after this farm of yours?

A. Yes.

10 Q. Who lives there with you? A. Nobody.

Q. You live there alone? A. Yes.

Q. Who was looking after it while you were away?

A. Mr. Johnston.

Q. How many pigs have you got?

A. About 75.

Q. Are you paying him? A. Yes.

Q. How much are you paying him?

A. I don't know what he is charging me.

Q. You have not come to any arrangement?

20 A. No, he came over on Sunday.

Q. I believe you sat in Court or in the court-house in Kitchener on Thursday or Friday of last week, is that right?

A. Yes, I believe it was.

Q. And you have now been down here in Toronto since when?

A. The night before last, I believe.

Q. You came down Tuesday night and have been here since? A. Yes.

30 Q. Who is paying your expenses?

A. I have not been paid.

Q. Give me that again, who is paying your expenses in Toronto?

A. I don't know, I am staying with Mr. Brock.

Q. Are you staying at the hotel? A. Yes.

Q. Are you paying for your hotel room or is somebody else?

A. I haven't made any arrangements for that.

Q. Who is paying your meals?

40 A. I paid for some.

Q. You paid for some. Now, are you asking me to believe that you have a farm on which you are the only person working and that you are going to take off four or five days as you already have done and come down to Toronto and pay your own expenses for a total remuneration of \$5. Is that what you are asking us to believe?

A. When you are subpoenaed you have to come regardless, as I understand it.

Q. I am not asking you what you understand, I am asking you what you did.

A. Well, I expect some money, of course I do.

Q. Of course you expect some money, of course you do. Now then, let us get on to the time when you were over in Port Austin. You told us of the number of
10 children who were there but did not mention Mr. McKee's son Julian. Was he there?

A. Yes, he was there.

Q. I believe you also failed to mention your wife and daughter were over with you?

A. Yes.

Q. And stayed there with you for some time?

A. Until the next day, the following day.

Q. You say they left the following day?

A. Yes.

20 Q. Where did they go? A. Back home.

Q. Why did they leave? A. They didn't like it there.

Q. Was it your intention when you went over there that your wife would work in and around the house as well?

A. That evidently was the arrangement made.

Q. You were engaged as a family, were you?

A. No.

30 Q. You and your wife were engaged as a married couple? A. That was supposed to have been it.

Q. You were to look after the outside of the house and your wife was to do the cooking?

A. Yes.

Q. And your wife left the day after because she didn't like it? A. Yes.

Q. When did this Miss Eastman come, the day your wife left? A. No, probably a week or ten days after I was there.

40 Q. And where did Miss Eastman live before she came to Port Austin? A. Cornwall.

Q. Who got in touch with her, you or Mr. McKee?

A. Mr. McKee asked me if I knew anybody wanting a position as a housekeeper and I had told him that Miss Eastman might take the position.

Q. You told him about Miss Eastman? A. Yes.

Q. How old was she then? A. I don't know, I didn't ask her.

Q. Tell me approximately, you told me how old everybody else was.

A. She may be around 32 to 35.

Q. How long had you known her? A. I had never met her until that day.

Q. You had never seen her until she got to Port
10 Austin? A. No.

Q. You had been in touch with her by correspondence?

A. Yes.

Q. Is it true you wrote her and asked her to marry you before you came to Port Austin?

A. No.

Q. What were you writing about?

A. This friend of mine, Mr. Douglas, was going with her girl friend and Mr. Douglas is a personal friend of mine and had asked me to drive him down to
20 Cornwall on different occasions and I never went down there.

Q. All right, that doesn't tell me what you were writing to Miss Eastman about. I want to know why you were writing to Miss Eastman?

A. Miss Eastman, through her friend, Mrs. Brown I believe was the name, and Mr. Douglas, they wanted to come to Kitchener or to Toronto to work, both of these ladies wanted to work and I had been doing some employment work and times was bad. I did a lot of that
30 and Miss Eastman and Miss Brown wanted to get a position up here.

Q. So they wrote to you to see if you could get them a job? A. That is right.

Q. You were considered an expert in employment placement? A. I wouldn't say an expert.

Q. Now, how many letters did you and Miss Eastman exchange before she came to Port Austin?

A. I wouldn't know.

Q. Several? A. Probably four or five.

40 Q. I suggest to you at least towards the end of that correspondence it was of an affectionate nature between you and Miss Eastman?

A. Absolutely not.

MR. BROCK: Are you prepared to support that?

MR. LOCHEAD: My friend will find out in due course. I believe you met Miss Eastman in Port Huron, is that

right? A. Sarnia.

Q. You and Julian drove to Port Huron?

A. Sarnia.

Q. Did you remain in Port Huron or cross the bridge to Sarnia? A. I stayed on the other side.

Q. You stayed on the American side? A. Yes.

Q. Who came over to Sarnia? A. Julian.

10 Q. Do you know whether or not Julian had any trouble in persuading Miss Eastman to cross over to Port Huron and continue along with you?

A. No.

Q. You don't know whether there was any hesitation on her part? A. No.

Q. By the way, before Miss Eastman came to Port Huron did you tell her you were married?

A. No, I did not, I had no occasion to tell anyone.

Q. Do you know whether or not Julian told her you were married? A. I don't know.

20 Q. Now then, where was your room in the Port Austin home, on what floor?

A. On the third floor.

Q. And where was Miss Eastman's room? A. On the third floor.

Q. Anybody else on the third floor?

A. There was another bedroom up there.

Q. Who was in it, Joanne? A. No, Mr. McKee had a fellow from Windsor, I believe, or Detroit, helping to put up his cottage.

30 Q. Another employee? A. Yes.

Q. You were the only three on the third floor?

A. Yes.

Q. Did you ever try to get in Miss Eastman's room at night? A. No.

Q. Isn't that the reason she left or threatened to leave her employment there?

A. I don't know anything about it.

Q. You don't know anything about that?

A. No.

40 Q. Isn't it true that Mr. McKee spoke to you because of the complaint Miss Eastman had made to him about your conduct and said under the circumstances either she would have to leave or you would have to?

A. He never approached me on that at all, that is untrue.

Q. In the car on the way from Port Huron to Port Austin did you make any advances to Miss Eastman?

A. No.

Q. You didn't try to become affectionate with her in any way? A. No.

Q. I believe when you originally were engaged to go to Port Austin you were engaged at a salary of \$150 a month for yourself and your wife?

A. That is right.

10 Q. And I believe an arrangement was made when Miss Eastman came that you were to pay her out of your wages of \$150 a month; isn't that right?

A. I don't think so.

Q. Did you continue to get \$150 a month?

A. I would have no authority to pay Miss Eastman.

HIS LORDSHIP: Q. Was there any such arrangement?

A. No.

MR. LOCHEAD: Q. When your wife went home what did you get a month? A. I just left it.

Q. What did you get? A. \$90.

20 Q. What is that you have? A. That is where I kept track of the money he advanced me.

Q. When did you make it up? A. Oh, that was made up at the time.

MR. BROCK: Perhaps it may be put in as an exhibit.

HIS LORDSHIP: I don't know why, the witness is entitled to refresh his memory from any memos made at the time.

MR. LOCHEAD: All right, how much were you paid by Mr. McKee while you were there?

30 A. On May 19 I got \$90.

Q. What is next? A. On June 2nd he gave me an extra \$10 on the way going into Port Austin and at that time I gave him notice that I was leaving. I had spoken to him before that about things not going properly.

Q. How much more money did you get?

A. Well, then, I got \$200 all told and he gave me \$4 on the 20th of May.

40 Q. When did you get the \$200; you got \$90 and \$10, that is \$100. When did you get the other \$100?

A. On the 20th of June.

HIS LORDSHIP: On the 20th of June he got another \$100? A. He gave me \$4.

Q. What was that for? A. To pay part of my way home.

MR. LOCHEAD: Q. So that you got \$204 from Mr.

McKee altogether, is that right? A. Yes.

Q. And you were there from, what was the date you arrived? A. The 20th of April.

Q. The 20th of April to the 20th of June. Now, Mr. Stever, I believe the original arrangement with Miss Eastman was made by you; you telephoned to her in Cornwall? A. That is right.

Q. Didn't you tell her at that time that you would
10 be paying her out of the \$150 a month which you got?

A. No.

Q. At any rate you say you never did pay Miss Eastman anything? A. No.

Q. As far as you were concerned if she was paid it was by somebody else?

A. Yes, I never paid her.

Q. Now then, were you in charge of Miss Eastman and her work around the house? A. No.

Q. Was your work limited solely to that outside
20 the house? A. No, I wouldn't say that.

Q. You wouldn't say but I want you to say.

A. Well, I had the cellar to clean up and the screens to take off the windows, storm windows and screens.

Q. Now then, one of the things you complained about was that you had to get your own breakfast?

A. Yes.

Q. And did that happen all the time you were there?

A. Practically all the time.

Q. I believe you also said that several times you
30 took Terry to school without Terry having his breakfast? A. So far as I know he didn't.

Q. Why didn't you get his breakfast?

A. I was out getting the horse ready to go to school.

Q. You had time to get your own? A. Yes.

Q. No time to get his? A. He wasn't up.

Q. Why didn't you get him up then? A. It wasn't my duty to get the boy up.

Q. In other words you felt no responsibility towards
40 him at all? A. I don't know why I should have wakened the boy.

Q. I am not asking you why; is it right you felt no responsibility towards him at all?

A. I felt my responsibility to get him to school.

Q. Why didn't you do something about getting him breakfast when you got your own?

A. I wouldn't know if the boy was sick or what happened to him.

Q. You wouldn't know what was the matter with him?

A. No.

Q. That happened many times?

A. Oh, probably twice or three times.

Q. Twice or three times all the time you were there?

A. Yes.

10 Q. And you say now you thought perhaps he was sick?

A. He might have been sick.

Q. Did you do anything about his being sick?

A. No.

Q. Did you say anything to Mr. McKee about it?

A. No, I believe I did mention to him about the breakfast and about getting him to school.

Q. Did you ever say anything to Mr. McKee about Terry having to go to school without having his breakfast?
A. Not that I can recollect.

20 HIS LORDSHIP: Did you ever say anything to Miss Eastman?
A. No.

MR. LOCHEAD: Q. Now, a moment ago I asked you whether you said anything to Mr. McKee about Terry going to school and you said yes, you thought you had?

A. That was, I understood --

Q. You said Terry wasn't getting up and having to go to school without his breakfast and I asked you if you told Mr. McKee that and you said you thought you did?
A. Yes.

30 Q. When was that? A. I don't know the date.

Q. About when, May or June? A. That would be in May.

HIS LORDSHIP: Q. A moment after that you told Mr. Lothead you didn't mention to Mr. McKee that Terry was going without his breakfast. Now which is correct?

A. I would say I told Mr. McKee.

Q. In May? A. Yes.

40 Q. What did you tell him; did you mention it once or more than once? A. I put it mildly, I told him in a mild way.

Q. In a mild way you told Mr. McKee this boy was going to school without his breakfast? A. Yes.

Q. How many times did you tell him that?

A. Only once.

Q. That was in May after you had been there some

time? A. Shortly after.

Q. Was anything done about it?

A. No, it continued.

Q. Now how much did it continue, because a few moments ago you told Mr. Lohead that this only happened two or three times.

A. That is that I was fairly sure he went without breakfast.

10 Q. You now say that after you told Mr. McKee about his not having breakfast it continued, what continued?

A. That I was getting the breakfast, that is what I mean.

MR. BROCK: No one was getting his breakfast.

HIS LORDSHIP: I just want to be clear, what were you doing?

A. I got his breakfast.

Q. When did you start to do that?

A. I continued getting his breakfast.

Q. When did you continue to get Terry's breakfast?

20 A. A few mornings after Miss Eastman was there.

Q. A few moments ago you said you didn't feed him, that it was not part of your duty. I find it hard to follow you.

A. Your honour, probably I can explain it to you this way; Miss Eastman didn't get up to get our breakfast.

Q. You got your own breakfast?

A. That is right, and Terry's.

Q. You got Terry's breakfast?

30 MR. LOCHEAD: Q. You told me a few moments ago you didn't get Terry's breakfast, you were too busy getting the horse.

MR. BROCK: Please, my lord.

MR. LOCHEAD: Please do not interrupt, you can re-examine.

HIS LORDSHIP: I don't want you to interrupt at this point.

MR. BROCK: I object to the form of that question on the grounds --

40 HIS LORDSHIP: Will the reporter read the question?

THE REPORTER: (Reads)

"Q. I believe you also said that several times

"you took Terry to school without Terry having

"his breakfast? A. So far as I know

"he didn't.

"Q. Why didn't you get his breakfast?

"A. I was out getting the horse ready to go to
"school.

"Q. You had time to get your own? A. Yes.

"Q. No time to get his? A. He wasn't up.

"Q. Why didn't you get him up then? A. It
"wasn't my duty to get the boy up.

"Q. In other words you felt no responsibility
"towards him at all? A. I don't know

10 "why I should have wakened the boy.

"Q. I am not asking you why; is it right you
"felt no responsibility towards him at all?

"A. I felt my responsibility to get him to school."

MR. LOCHEAD: You have just now told his lordship
you didn't get his breakfast?

A. On this particular morning breakfast was on the
table for him but I didn't see he got his breakfast.

Q. Do you know whether he got his breakfast or not?

20 up A. I was satisfied he didn't because the boy wasn't
and it only took me five minutes to get the horse.

HIS LORDSHIP: Is that one occasion?

A. Two or three occasions.

---The Court was then adjourned until September 26,
at 10.30 o'clock a.m.

---The Court resumed at 10.30 o'clock a.m. on
September 26.

30

JOSHUA STEVER, previously sworn,
resumed the stand.

---CROSS-EXAMINATION BY MR. LOCHEAD CONTINUED:

Q. Now, Mr. Stever, where did you stay last night?

A. At the Barclay Hotel.

40 Q. Is that where Mrs. McKee and her other witnesses
are staying?

A. I don't know.

Q. Did you see them last night? A. Yes.

Q. I suppose you discussed this case with them?

A. No.

Q. The case was not mentioned by you with them last
night? A. No.

Q. They didn't tell you what to say to-day?

A. No.

Q. Is it not true immediately after the Court adjourned yesterday afternoon Mrs. McKee got you outside the door of this courtroom and gave you quite a going over?

A. No.

Q. Did she speak to you just outside the courtroom yesterday afternoon?

10 MR. BROCK: I hope my friend can give evidence she did give him a going over.

HIS LORDSHIP: He is not asking, not saying. At the moment I want your answer to that.

MR. LOCHEAD: Is that still your answer?

A. Yes.

Q. Did she say anything outside the courtroom yesterday afternoon?

A. Yes, she was talking to me.

20 Q. About this case? A. Not in particular, no.

Q. About the evidence you had given or were going to give? A. No.

Q. Nothing was said about that at all to you by anybody last night? A. No.

Q. Now then, Mr. Stever, I believe you told us yesterday that your principal duties at the home of Mr. McKee at Broken Rocks were those of gardener, is that right?

A. Gardening and around and building the cottage.

30 Q. Sort of handyman around the grounds of the house?

A. That is right.

Q. I suppose it would be fair to say that because of those duties you would be required to be outside most of the time? A. Yes.

Q. Working all day long? A. Practically all day.

Q. Well then, will you please tell me how it is you know so much about what went on in the house and what Miss Eastman was doing all day long?

40 MR. BROCK: My lord, he never said anything about what they were doing all day long; he said he knew they were not up in the morning.

HIS LORDSHIP: I think it would be better if you let the witness answer. If you do not understand the question, witness, you tell counsel.

MR. LOCHEAD: Do you understand the question?

A. Yes.

Q. The question was how you would know what they were doing all day? A. I wouldn't know what they were doing all day.

Q. You don't know what they were doing all day?

A. No.

Q. Now then, Mr. Stever, I believe you told us yesterday that you slept in a room on the third floor
10 of this house, is that right? A. Correct.

Q. And that there were two other bedrooms on the third floor, one occupied by Miss Eastman and one by another employee, is that right?

A. Yes.

Q. Was there any kind of sitting-room or living-room on the third floor?

A. No, there was a play-room, a kind of a play-room.

Q. On the third floor? A. Yes.

Q. Where did you spend your evenings for the most
20 part while you were working for Mr. McKee?

A. I spent the evenings getting the chores done and sometimes working around the cellar and in my bedroom.

Q. As a general rule, I do not want to go into specific dates, but as a general rule I suppose your work would be done fairly early in the evening, is that right?

A. About nine or 9.30.

Q. As a general rule would you go upstairs to the
30 bedroom or play-room?

A. I didn't go to the play-room.

Q. You went upstairs to the bedroom?

A. Sometimes I was in the cellar.

Q. What did you do in the cellar?

A. Things that had to be done, working around the furnace and so on.

Q. You worked down there? A. Yes.

Q. As I said before I believe you agreed as a general rule your work would be done early in the evening, at 8.30 or nine o'clock? A. Yes.

Q. I suggest to you as a general rule after that you would go to your room?

A. As a rule, yes.

Q. I suggest to you as a general rule you stayed in your bedroom and wouldn't go downstairs again?

A. That is right.

Q. Now then, Mr. Stever, you gave considerable evidence yesterday as to the goings and comings of Mr. McKee. Did you know at that time that Mr. McKee had a position with Pan-American Airways?

A. No, I didn't exactly know what his position was, but I knew he had some important position.

Q. With Pan-American Airways?

A. With railroads, something to that effect.

10 Q. Did you know as a general rule he was required to attend a meeting in New York City on Tuesday of each week?

A. No, I didn't know that.

Q. I am suggesting to you, Mr. Stever, that as a general rule while you were at McKee's home, Mr. McKee left Port Austin on Monday and went to New York and returned to Port Austin on Wednesday or Thursday of each week. Isn't that substantially correct?

A. He didn't always leave on Monday, he left on Sunday sometimes.

20 Q. How many times would he have left on Sunday in the two months you were there?

A. I can't tell you.

Q. Perhaps once or twice? A. More than that, maybe four times. I would say about half the time.

Q. About half the time he left on Sunday and the other half on Monday morning? A. Yes.

Q. I suggest to you as a general rule he returned to Port Austin on Wednesday or Thursday?

A. Mostly Thursday, I believe.

30 Q. You think mostly Thursday; and I suggest to you further that having returned to Port Austin he remained at his home until he left on Sunday or Monday?

A. No, he left again on the following day, Friday, sometimes.

Q. Sometimes? A. Yes.

Q. How often? A. I wouldn't know.

Q. Well, did he leave again on Friday more often than he remained in Port Austin?

40 A. It seems to me he wasn't there very much on Friday or Saturday.

Q. Do you know where he went? A. No.

Q. Was he there at night or away all the time?

A. Away.

Q. You are not very certain in your recollection when Mr. McKee was there, are you?

A. Well, I am pretty certain it was on Thursday he came back, Thursday nights, and left again sometimes on Friday and Saturday and Saturday or Monday mornings, sometimes on Sunday.

Q. In other words, sometimes he was there from Wednesday or Thursday till Sunday morning?

MR. BROCK: The witness never said that.

10 HIS LORDSHIP: He is asking the witness, he has not said he said it, he is putting it to him.

MR. BROCK: My lord, he puts the question as Wednesday or Thursday, let him put the question as Wednesday and then Thursday.

HIS LORDSHIP: I don't think he is required to do that.

MR. BROCK: My lord, in view of this witness's ability to answer questions, I just think they should be carefully put.

20 HIS LORDSHIP: Are you suggesting he is feeble-minded?

MR. BROCK: No, my lord.

HIS LORDSHIP: Why can't he answer the question if he is of normal intelligence. I would have no difficulty in answering it if I knew the facts and I am sure you wouldn't. I am not suggesting you and I are unusual.

MR. LOCHEAD: In other words, Mr. Stever, is it not true that Mr. McKee was at his home from Wednesday or Thursday to Sunday or Monday morning?

30 A. I can't recollect he was there that length of time.

HIS LORDSHIP: You see, Mr Brock, you got the answer you wanted.

MR. LOCHEAD: My friend has not enough confidence.

Q. You told us yesterday that your sister, Mrs. Ament, was in her seventies? A. Yes.

Q. Do you know exactly how old she is?

A. Not exactly, but I could come within a year.

Q. Do you know when her birthday is?

A. I believe it is in September.

40 Q. Do you know the date? A. It would be the 18th.

Q. You are not very sure, are you? A. No.

Q. Do you know the year she was born?

A. I could get it.

Q. I asked you about it yesterday.

A. I was born in 1884.

Q. Is she younger or older? A. She is the

second oldest sister, there are two between her and Maggie was three years older.

Q. Her birthday is September 18th?

A. About September 18.

Q. How many brothers and sisters have you got?

A. Eleven all told.

Q. During your lifetime have you been fairly close to Mrs. Ament? A. Visiting back and forth.

10 Q. No, I mean have you been fairly close to her?

A. Not so much since she has been married.

Q. Which was what, about 40 years ago?

A. It would be probably longer than that.

Q. You haven't seen so much of her since then?

A. I have seen her different times, sure.

Q. You have a normal brotherly affection for Mrs. Ament, have you? A. Yes.

20 Q. Now then, you said yesterday about this school which you attended, and I don't believe you told us when was the last time you were in the school. I do not mean when you were in it as a student, but I mean since being a student?

A. I don't believe I have been in it since I left school.

HIS LORDSHIP: You escaped once and stayed away?

A. Yes.

MR. LOCHEAD: Q. Now then, you also made some reference to the house.

HIS LORDSHIP: That is over 50 years ago.

30 MR. LOCHEAD: Q. You made some reference to the house now occupied by Mr. McKee on this farm. When was the last time you were in that house?

A. Oh, years ago, I couldn't tell you how many years ago.

Q. Many years ago? A. Yes, it would be when Mr. King had it.

Q. 20 or 30 years ago, at least?

A. Yes, it would be 20 years ago, I believe, probably more, I don't know.

40 Q. Now then, you also referred yesterday to the fact that you were in Lynwood I believe on Good Friday of this year. Did you say that?

A. Yes.

Q. I believe you said you could not get past the school which is about half a mile west of Lynwood?

A. Yes, that is correct.

JOSHUA STEVENS -- Witness for Plaintiff --
Cross-Examination

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Q. Were you driving a car? A. No, my son drove the car.

Q. You were in a motor car, though? A. Yes.

Q. Do you know or do you not know that as a matter of fact Mr. McKee and Terry were at the farm that day?

A. No.

Q. At their farm? A. No, I didn't.

10 Q. So you don't know that Mr. McKee and Terry had driven up to Mr. McKee's farm in a motor car that day?

A. No.

Q. Would you be surprised to learn they had driven up to Mr. McKee's farm and got through without any trouble?

A. It would be a very big surprise to me.

20 Q. Now then, I presume, Mr. Stever, that you will agree with me that the condition of the roads that you referred to yesterday as existing on Good Friday was due to the melting of the snow and the disappearance of the frost; is that right?

A. The breaking up of the winter generally.

Q. Is it not true last winter was an exceptionally severe winter as far as snowfall was concerned?

A. Correct.

Q. And also severe as far as cold was concerned?

A. Yes, sir.

Q. Exceptionally severe? A. Yes.

Q. Do you know the son of your brother Moses?

A. Yes, I don't know the boy so good.

30 Q. Beg pardon? A. I don't know them so well.

Q. But you know that Moses has a son? A. Yes.

Q. You would know him to see him? A. Yes.

Q. Now, were you up at the farm of Moses Stever a week ago last Monday? A. Yes.

Q. With whom? A. With a car.

Q. Who were in the car? A. Mrs. Stevens and the little girl alongside.

Q. There are several ladies sitting there, do you know which one you mean?

40 A. Cynthia, I believe.

Q. Anybody else? A. Yes.

Q. Who? Was Mrs. McKee with you? A. Yes.

Q. Anybody else? A. Another lady and I don't know who she was.

Q. She isn't in Court at the present time?

A. Yes, I believe she is.

Q. Which one is she? A. The lady with the blue ribbon on her hat.

Q. Mrs. Hiller? A. Yes.

Q. Whose car did you have? A. I don't know.

Q. It wasn't yours? A. No.

Q. Did you speak to Mr. Stever's son that day?

A. Yes.

10 Q. Did you ask him if his father had had a row with Mark McKee? A. No.

Q. Did anybody ask him that in your presence?

A. Moses Stever told me that himself.

Q. Moses had told you that some time before?

A. Yes, but at my place.

Q. Did you refer to that fact when you were talking to his son? A. I believe he told me it was patched up.

Q. You believe his son told you that day that it was patched up? A. Yes.

20 HIS LORDSHIP: There must have been some conversation about it. Be frank and tell us what was said. You said you didn't say anything about it. How can I put much weight in what you say when you give evidence of that sort?

MR. LOCHEAD: Mr. Stever, my question is this: Did you have some conversation with Mr. Stever's son a week ago last Monday as to a quarrel or a dispute between Moses Stever and Mark McKee?

A. Yes.

30 Q. All right, what was that conversation?

A. I asked him if things had got patched up and he said yes. That is all that was said about that.

Q. When was the last time before that that you had seen Moses Stever?

A. Probably two weeks or somewhere along there he came in to see me on the farm.

Q. When was the last time before that that you had seen his son? A. I couldn't remember.

Q. Some time? A. Quite some time.

40 Q. Months? A. Yes.

Q. Why were you so interested in the quarrel or dispute between Moses Stever and Mark McKee?

A. I wasn't interested in it.

Q. Why did you ask him about it? A. I was just curious to know.

Q. Why were you curious? A. Because my

brother had told me considerable things about Mr. McKee of the difficulties he had.

HIS LORDSHIP: Q. What did you go out to Moses Stever's place for with these ladies?

A. They wanted to know where the schoolhouse was.

Q. Did you know that you had gone to the same school yourself?

A. Yes.

10 Q. Why did you have to ask somebody on Moses Stever's farm?
A. I didn't ask Moses Stever where the school was.

MR. LOCHEAD: Q. One minute ago you told his lordship the reason you went to Moses Stever's farm was to find out where the schoolhouse was.

HIS LORDSHIP: As I understood him he went out with these ladies to see the school where Terry went to school.

20 MR. LOCHEAD: Q. Well then, is it true that the reason you went to Moses Stever's was you wanted to find out about these things that Moses had told you about Mr. McKee?

A. No.

Q. Why did you go to Moses Stever's farm?

A. I don't know, I didn't go there until we got right to the gate and we drove in.

Q. Why? A. Well, I suppose they wanted to see -- I wanted to see Moses myself.

Q. Why? You don't have to suppose. You know very well why you went there and surely you can say it.

A. There was no particular reason I went in.

30 Q. What was your reason for wanting to see him? One reason might be he was your brother.

A. That is really the reason, he is my brother and we were on good terms and I like to see him.

Q. In other words, you were paying a friendly brotherly visit to your brother Moses?

A. That is right.

40 Q. And as the occasion for that friendly brotherly visit you took the opportunity when you were with four ladies from out of town, in somebody else's car, to do it; is that right?

A. No, I wouldn't say that.

Q. That is what you have just said.

A. We went down there for the sole purpose of seeing the school where Terry went to school. I had thought Terry was going to Lynwood school where he belongs; that is the section where the farm is in.

Q. Do I gather from that you had to go to Moses Stever's farm to find out what school Terry was going to?

A. His boy told us.

Q. Is that why you went to the Stever farm?

A. No.

Q. Had you been to the school there?

A. No, we called there first on our way going to the school.

10 Q. You called at Stever's before going to the school?

A. Yes.

Q. And you didn't go there to find out what school Terry was going to?

A. No.

Q. How did you find out what school Terry was going to?

A. Moses' son told us.

Q. Then you had this discussion with his son about the row or quarrel that his father had had with Mr. McKee. Is that right?

A. Yes.

20 Q. And I believe you told me a few moments ago that Mr. Moses Stever had told you a number of things about Mr. McKee?

A. Yes.

Q. Unpleasant things, I suppose, or were they?

MR. BROCK: Ask him what they are.

MR. LOCHEAD: Q. They were unpleasant things about Mr. McKee?

A. Not so very unpleasant, something that would crop up in business matters.

Q. I would suppose you were very interested in find-out what they were?

A. No, I was not, I was not interested.

30 Q. You were not interested or curious at all?

A. No.

Q. Mr. Stever, I am suggesting to you you went to the farm of your brother Moses Stever for the sole purpose of having Mr. Moses Stever appear as a witness against Mr. McKee.

A. Absolutely not.

Q. You made no such suggestion to his son?

A. No.

40 Q. You didn't say anything to him about his father appearing as a witness?

A. No.

Q. Did anybody in your party make such a suggestion?

A. No.

Q. They did not?

A. No.

---RE-EXAMINATION BY MR. BROCK:

Q. It has been suggested by my learned friend that you are the black sheep of the family.

HIS LORDSHIP: He doesn't know what that means so I think you will have to explain it to him.

MR. BROCK: Thank you, my lord.

10 Q. You are staying on this farm, I believe, are you not? A. On my own farm.

Q. Where is your wife living? A. In Kitchener.

Q. Who lives there? A. Well, my daughter.

Q. That is your unmarried daughter?

A. Yes, my oldest daughter.

Q. And do you live with them when you are not at the piggery? A. Yes.

Q. You do? A. Yes.

Q. Now in whose name is this farm?

A. In my wife's name and mine.

20 Q. And how is it, as joint tenants, do you know?

A. I don't know how it is. I believe it is as joint tenants.

Q. Are you friendly with most of your brothers and sisters? A. Yes.

Q. And do you support your wife? A. Yes.

Q. And you live with her? A. Yes.

Q. Now, are you friendly with your other children?

A. Yes.

Q. How many other children have you?

30 A. I have three children all told.

Q. Where do they live? A. One lives in Waterloo and the other one lives just, I believe, outside the city limits in Kitchener. I said yesterday I believed they lived in Kitchener, but I believe she is just over the limits.

Q. And the other daughter that is unmarried lives with you and your wife? A. Yes.

Q. Where is that place?

A. 15 Pearl Place, Kitchener.

40 Q. Why doesn't your wife live with you at the piggery? A. She is required at the house there. She is a dressmaker with a fairly good trade and besides she has to have the girl's meals ready and we have two other girls rooming there.

Q. Now, it was said in cross-examination that you had been paid that \$5 when you were served with a

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subpoena and you expected to be paid. Will you explain to his lordship what you mean when you say you expected to be paid, what did you expect to be paid? A. I expect to be paid for my man up there I have looking after the pigs and for my expenses down here.

Q. Were you told by Mrs. McKee you would be told that before you came here?

10 MR. LOCHEAD: I object to that question, that must surely be hearsay.

HIS LORDSHIP: I think you raised it.

MR. BROCK: Q. Were you told by Mrs. McKee she would give you that money, she would reimburse you that money? A. I expected to be reimbursed, yes.

Q. Did she tell you she would give you any other money? A. No.

20 Q. Did anyone tell you he or she or they would give you any other than your expenses in coming to the trial? A. No.

Q. As a matter of fact you paid for my breakfast one morning, did you not?

A. Yes, that is right.

HIS LORDSHIP: You have been taken for a ride.

MR. BROCK: There is some doubt as to why you went to Mr. Moses Stever's place. Now, you have mentioned in your cross-examination that you thought that Terry should have gone to the Lynwood school?

A. Yes, the farm was assessed to that school.

30 HIS LORDSHIP: That surely is not evidence.

CYNTHIA McKEE POLLOCK, sworn,

---EXAMINED BY MR. BROCK:

Q. You are a married woman? A. Yes, I am.

Q. Where do you live, Mrs. Pollock?

40 A. The last place I lived was 14248 Dickens St., Sherman Oaks, California, my mother's house.

Q. You are a daughter of Mark T. McKee?

A. Yes, the youngest daughter.

Q. And you say that you were at Mrs. McKee's home in Sherman Oaks before you came to Kitchener?

A. Yes.

Q. And would you care to tell the Court why you went to your mother's home in California?

A. Yes, I was at my mother's just for the last two weeks before I came to Kitchener because I was ill with polio and my mother was taking care of me.

Q. You had what is known as polio?

A. A slight case of polio.

Q. And Mrs. McKee looked after you? A. Yes.

10 Q. Where do you ordinarily live? A. Since my marriage we have not had any special place due to housing facilities.

Q. When were you married? A. July 18 of this year.

Q. Now, how old are you? A. 24.

Q. Do you remember when Mark T. McKee, your father, and Mrs. Evelyn McKee, your mother, were married?

A. Yes, they were married on July 19, 1933.

Q. Where were you living at that time?

20 A. I was living at our home in Mt. Clemens, Michigan, although I was visiting my older sister in California at the time.

Q. Then I suppose you returned to your Mt. Clemens home in Michigan? A. Yes.

Q. How old were you at the time your stepmother and father were married?

A. I was 11 years old.

Q. How old was Julian? A. He was born in 1929 so he would be about four.

30 Q. And were you the next youngest?

A. That is correct.

Q. How old was Mark? A. He was seven, he was born in 1925.

Q. He would be then about seven or eight?

A. Yes.

Q. And Malcolm is the next youngest?

A. Yes, he is two years my junior so he would be nine.

Q. You were eleven at the time? A. Yes.

40 Q. Who is the next oldest? A. There was Mark, he was born in 1921.

Q. So in 1933 he would be 12, and who was the next oldest? A. Joanne, she was born in 1919.

Q. She would be 14 at the time? A. Yes.

Q. And who is the next? A. Jane, she was born in 1917, I believe, and she would be 16 at the time.

Q. Now, did you and the other children of your father, Mark T. McKee, live with your father and Evelyn McKee, your stepmother?

A. Yes, we all moved to what is known as the summer home in Broken Rocks, Michigan. I believe we moved there in the summer of 1934 because my mother and father were living in Washington D.C. the first year of their marriage and when mother took us children we all moved
10 to the summer home at Port Austin.

Q. That is you and the other children and your father and Mrs. McKee?

A. Yes, all of us children were at the Mt. Clemens home until a year after my father was married to my stepmother and we all lived together in the summer home in 1934.

Q. How long did you remain at this home in Port Austin?
A. We stayed there that winter. I went to my older sister's in California the first year we
20 were all together, due to my health, so I went there that first winter.

Q. Then in 1935 where were your father and Mrs. Evelyn McKee, your stepmother, and the rest of the children? Where did they live?

A. I returned from California to Michigan that following summer and we all moved to Milwaukee.

Q. That is you all moved to Milwaukee?

A. Yes.

Q. Now, how long did you live there?

30 A. We lived there two years, until 1937.

Q. Then where? A. Then we moved to Azusa, California.

Q. How many of the children moved to Azusa, California -- that is all Mr. McKee's children?

A. There were eight of us and the two older girls were going to college at the time.

Q. Where were the two older girls going to college?

A. The Women's College University of North Carolina.

Q. That accounted for two, then there were eight.

40 When you say eight do you include Jerry?

A. No, nine with Jerry.

Q. Two of the older girls were going to college and three were married at the time?

A. I was talking about all eleven. Three were married, the second oldest boy was married, three years after mother came into the family, but he was not living at home and two of the older girls were going to school,

but they would be in Azusa during the summertime.

Q. Now, since you moved to California in 1937 have you been living with your stepmother, Mrs. McKee?

A. Yes, up to the time of my marriage.

Q. Until she came to Kitchener?

A. Yes, last March.

Q. Now, what was your home life before, that is after the death of your real mother and before Mrs.

10 Evelyn McKee came into your family what was your home life like?

A. Well, we had a series of housekeepers.

Q. When did your mother die?

A. May of 1931. We had a series of housekeepers and at one time there was an elderly couple there and at the very last we were under the supervision of my uncle and his wife, my father's brother.

Q. Then Mrs. McKee came into the family in 1933?

A. She didn't take the family over until 1934.

20 Q. She took the family over in 1934 and what was your home life like following the time Mrs. McKee took over the family?

A. For the first time since my own mother passed away there was an organized household. We had regular tasty meals, decent clothing and supervised work and play hours.

Q. When you say supervised work and play hours what do you mean by that?

30 A. For the girls mother saw we had household duties and we were all required to make our beds and somebody set the table. As I say, our household was organized and we all shared duties and it was just the family co-operating and having loving care and affection.

Q. What about the boys, their play and work?

A. As well as I remember the boys did outside work like mowing the lawn, clipping the hedges and making their beds.

40 Q. Now then, you have told us, do you remember when the separation occurred in 1940, December 1940?

A. Yes.

Q. You continued to live with your stepmother, Mrs. McKee?

A. We all continued to live there until the school term ended in June 1941.

Q. That is all the children continued to live with her?

A. Yes.

Q. And Terry, you remember Terry was born in July 1940?
A. I remember that.

Q. Just before we go on to that, what care did Mrs. McKee give to the younger children, that is, Julian, Muir and yourself, when she took over the family in 1934, what care did she give the family?

A. As I said before, she took over in a sweet and loving and kind manner and saw that we were properly clothed and fed and a general spirit of happiness prevailed throughout the house.

Q. With regard to that, what did the children call Mrs. McKee?

A. We all called her mother from the start.

Q. What was their attitude towards Mrs. McKee at that time?
A. She was some one that came in to brighten our lives and we all felt united and very happy to have some one that showed us care and affection.

Q. Now then, Terry was born in 1940; just to shorten it up, Terry was born in July 1940, and he remained with Mrs. McKee until November of 1942. That is true, isn't it?

A. That is true.

Q. What sort of care and attention did Mrs. McKee give to baby Terry during that time?

A. Well, she showed him the same loving care and affection she had shown us other children before Terry was born.

MR. LOCHEAD: There is not the slightest suggestion that Mrs. McKee has not been a good mother to these children.

HIS LORDSHIP: Are you not anticipating something that may be reply? There is no suggestion casting any doubt on Mrs. McKee's kindness to the McKee children or to Terry. To me it does not seem to be raised but I may be wrong. If you want to go into it, all right, but it seems to be a matter which may more properly be raised in reply.

MR. BROCK: Then, during the summer of 1945 and 1946 Terry was with Mrs. McKee?
A. Yes.

Q. Were you with them at that time?

A. Yes, I was.

Q. And where did you live?
A. We were living at our home in Hollywood, California.

Q. Did anyone else live there?

A. Yes. My brother Jerry had returned, he returned in 1946.

Q. And you lived there until Mrs. McKee had to go Kitchener? A. That is true.

Q. Now, have you been at this home of Mrs. McKee's in Sherman Oaks? A. Yes.

10 Q. Will you tell the Court what sort of home that is? A. Yes, it is located in the downstairs part of a series of what are called apartments. It is a five-roomed house, two bedrooms and a living-room, a large kitchen and there is a play-yard out in the back and also there is a yard in the front.

Q. There is a dining-room in it, too?

A. Yes.

HIS LORDSHIP: Q. Who is living there with your stepmother? I take it you are not going to be living there, you are living with your husband still?

MR. BROCK: I am sorry, my lord, I didn't hear that.

20 THE WITNESS: It will be my brother Jerry and my mother and I who contemplate living there. I do not know for sure yet.

MR. BROCK: I show you Exhibit 20 in these proceedings. What is that a photograph of?

A. That is a photograph of my mother's house in Sherman Oaks.

Q. The place you have been describing?

A. Yes.

30 Q. And is there a school nearby this apartment house in Sherman Oaks? A. Yes, it is located on the same street and is about three blocks away from this home.

MR. LOCHEAD: My lord, I assure my learned friend I am not going to deny the authenticity of these photographs.

MR. BROCK: That is all, thank you.

40 ---CROSS-EXAMINATION BY MR. LOCHEAD:

Q. Now, Mrs. Pollock, the last answer I got, I believe it was to a question by his lordship as to whether or not you contemplate living in Sherman Oaks with Mrs. McKee was that you contemplate living there but you don't know for sure. Where does your husband live?

A. In San Francisco, he works there.

Q. I take it you are happily married?

A. There are a few matters I have to discuss with my husband upon my return.

Q. Let me ask you this question, do you think you will be living with your husband or not when you return?

A. I really couldn't say because of a delicate matter which I do not wish to discuss.

10 Q. That is quite all right. In other words, to sum up and to leave the point, I take it as an inference from what you say that you do not know whether you will live with your husband on your return or will live elsewhere?

A. That is correct.

Q. Then, Mrs. Pollock, do you recall the setting up of certain trusts by your father in favour of yourself and your brothers and sisters?

A. Yes, I do.

Q. And do you recall when that was done about 1936?

20 A. I cannot recall but it was approximately that.

Q. And I believe they were set up in the form of individual trusts for each of the 11 children?

A. That is right.

Q. And did you know then or have you learned since approximately the amount that was put into each one of these trusts, the principal amount?

A. No, and I never heard.

Q. So you have no idea what these trusts may be worth at the present time?

A. No.

30 Q. Would you be able to answer this question; while you may not know the exact amount do you know that the trusts were set up in very substantial sums?

A. I gathered that in that I heard that from my brothers and sisters. One had bought a house of the trust so I assumed it was quite a substantial amount.

Q. Would you agree that the trusts were all set up in identical amounts or don't you know that?

A. I really would not be able to say.

40 Q. Now then, Mrs. Pollock, since the separation of your father and Mrs. McKee in December of 1940, has your father paid you certain moneys from time to time?

A. From my trust, yes.

Q. They have come from your trust? A. Yes.

Q. Have you any idea what amounts would be paid each year? A. Through my lawyer, Mr. Cloud, it was agreed I be paid an amount from my trust of \$150

every three months.

Q. You say it was agreed between Mr. Cloud and whom?

A. And my father and whoever is trustee for my father. One trustee is my eldest brother and my uncle Max.

Q. It was agreed you would be paid \$150 every three months?

A. Tri-yearly.

Q. Every three months would be quarterly.

10 A. I mean tri-yearly.

Q. That is \$450 a year? A. Yes.

Q. Have you been paid those amounts?

A. Just since - I really would not be able to say when they commenced but it was when we left Milwaukee, since the separation. I did not receive anything from my trust until, as far as I can recall, Mr. Cloud wrote my father or my father's attorney asking that I get some amount from this trust.

Q. And this agreement was made?

20 A. Yes, and I cannot say the year.

Q. Was it not while you were in Milwaukee?

A. I connect it with Milwaukee in some way.

Q. I believe Mrs. McKee stated you went to Milwaukee in June, 1944?

A. We were there in 1943, we were there for two winters I know, but somehow I connect receiving my first trust account in Milwaukee. I may be wrong about that but I know it has been since our family dispersed.

30 Q. The first amount that you received prior to the separation of your father and Mrs. McKee was in Milwaukee?

HIS LORDSHIP: Mr. Lohead, how does this help the issues in this case?

MR. LOCHEAD: My lord, I submit this evidence is admissible on the question of credibility of this witness. I propose to discuss the trust that has been set up for her and to question the relationship between this witness and her father and I submit that this evidence is admissible on the question of credibility.

40 HIS LORDSHIP: Her evidence is that her stepmother is a good stepmother to her and she has not commented on her father at all and how the relation between these two has any interest to me in respect to the custody of the boy I do not know. I think it is going pretty far afield.

MR. LOCHEAD: I submit, my lord, the relationship

between this witness and her father is admissible in this way in that the witness is appearing to give evidence on behalf of Mrs. McKee against her father.

HIS LORDSHIP: I realize that but after all this girl was a child when Mrs. McKee came to the family and evidently Mrs. McKee brought her up almost as much if not more than her own mother did and if in this unfortunate family disagreement she clings to one or the other of the two parents, I do not think that necessarily reflects on either.

MR. LOCHEAD: Yes, my lord, quite so, but I propose with your lordship's permission to go into the question of the reasons for the attitude this witness adopted in her choice and which evidently was forced upon her.

HIS LORDSHIP: If it reflects upon Mrs. McKee's ability to take care of Terry I think it is probably relevant.

MR. LOCHEAD: I submit, my lord, it does. I do not like to state at the present time why I am making that submission because I could very well be accused of attempting to give evidence, and this witness's evidence may not bear out the point I am attempting to establish.

HIS LORDSHIP: You go on then, I cannot see it has any bearing on it as yet.

MR. LOCHEAD: I have very little more to go on with. Now then, I believe my last question was this, I was trying to find out for what period of time you had received no payments out of your trust until, as you say, you started to receive payments when you were in Milwaukee. Do you remember when prior to that you had received payments?

A. Thinking it over, I recall having received a cheque through my lawyer. I asked for money for medical bills I had incurred and I recall I think it was the amount of \$1,000 as far as I can remember was paid from my trust. I think that was the first substantial payment I received but I know it was after the family dispersed.

Q. It would be after September 1941?

A. As far as I can remember.

Q. Do you believe that you received that payment before you were in Milwaukee?

A. Probably so. In thinking it over I believe I received it in California because I was under the care of a physician in California.

Q. Before going to Milwaukee? A. Yes.

Q. Was that the only payment you had received from the time the family dispersed until this agreement was made in Milwaukee?

A. I really couldn't say for sure. I just happened to remember this one amount, I think it was \$1,000, and I know most of that went towards medical bills because it was quite large.

10 Q. I suggest to you that under date of December 31st, 1941, you received the sum of \$100. Would you agree with that, December 31st, 1941?

A. Oh, yes, that was at Christmas time and my sister gave it to me. I do recall that.

Q. You say that \$100 was from your sister?

A. She brought me the cheque, it was a trust cheque.

Q. It was a cheque from the trust which your father had set up? A. Yes.

20 Q. I suggest to you on November 29th, 1943, you received another cheque for \$200?

A. What date?

Q. November 29th, 1943? A. Yes, possibly.

Q. You would agree with that, would you?

A. Yes.

Q. And I suggest to you under date of November 22, 1944, you received a cheque for \$403.74. Would you agree with that?

A. When was that date?

30 Q. November 22nd, 1944. That would be while you were in Milwaukee. A. Yes, and as well as I

can recall maybe those were dividends or something like that but I understood we were all getting dividends.

Q. You do not disagree that you received that amount at that time? A. Probably so.

Q. I suggest to you under date of December 18, 1945, you received a cheque for \$1,250. Would you agree with that? A. 1945 --

Q. That would be two years ago.

A. \$1,250.

40 Q. The cheque is dated December 18, 1945, for \$1,250. Do you recall that?

A. Yes, I assume I got it. I do not recall what the amount was.

Q. You would not disagree with it?

MR. BROCK: My lord, I submit this cross-examination is irrelevant and should not be admissible.

MR. LOCHEAD: Is my friend submitting I am not entitled to test the credibility of the witness?

MR. BROCK: It is on irrelevant matters that have not arisen.

HIS LORDSHIP: She is not saying she did not get the money.

MR. BROCK: My lord, my purpose is to speed up the trial and get it over with.

10 HIS LORDSHIP: I am not going to interfere with him.

MR. LOCHEAD: Q. Then, I also suggest to you under date of December 10th, 1945, you received \$1,000 from the trust, that is December 10th, 1945, you received \$1,000 from the trust account. Would you agree with that?

MR. BROCK: Show the witness the cheque.

MR. LOCHEAD: All right; do you want to see the cheque?

20 THE WITNESS: Yes, I assume I received it, I have endorsed all of them.

MR. LOCHEAD: I am producing at your counsel's request a cheque dated November 10th, 1945, drawn on the National Bank of Detroit, payable to Cynthia J. McKee.

A. Yes, that is my signature.

Q. And underneath it appears the signature of Lynn Alexander. Is that the signature of Mrs. McKee?

A. Yes.

MR. BROCK: Put it in.

MR. LOCHEAD: Yes, I will be delighted to.

30 HIS LORDSHIP: If anything turns on it you should put in all the cheques; I do not think an isolated cheque means anything.

MR. LOCHEAD: I did not put the others in.

HIS LORDSHIP: Let the witness see all the cheques.

MR. LOCHEAD: The first cheque I referred to was one dated December 31st, 1941, in the amount of \$100?

A. Yes.

Q. That is your endorsement? A. Yes.

40 Q. The second cheque I referred to was one dated November 29, 1943, for \$200 which appears to be payable to Joseph W. Scott. I suggest that was for medical expenses in 1943?

A. I do not understand why Joseph Scott's name is on it.

Q. Do you recall you had to make an arrangement through your attorney to receive certain money for

medical expense?

A. Yes, but why has it Mr. Scott's name?

Q. I don't know. Do you remember that amount was paid to Joseph Scott on your behalf for medical expenses?

A. I know I had medical expenses but I fail to see why Mr. Scott's name is on there.

Q. You do not recall that money being paid on your behalf? A. I recall that amount but I do not re-

10 call seeing the cheque.

Q. Was it about that time, November 29, 1943? I do not expect you to recall the exact date but that was probably just before you went to Milwaukee.

A. There was some medical expenses about that time.

Q. Then the next cheque I refer to is one dated November 22nd, 1944, in the amount --

MR. BROCK: That is not signed by the witness.

HIS LORDSHIP: That is quite clear; she said she did not sign it.

20 MR. LOCHEAD: Then there is a cheque dated November 22nd, 1944, in the amount of \$403.74. That cheque does not bear your endorsement, do you recall it?

A. In payment of auditing fees.

Q. I believe that was in connection with the action you had commenced against your father in Milwaukee?

A. Yes.

Q. And the next cheque I refer to is one dated December 18, 1945, in the amount of \$1250 which is payable to Poss and Schuler.

30 A. Mr. Poss was my father's attorney in Milwaukee so why would his name be on it?

Q. I don't know, I am asking you. I suggest that is in payment of your legal expenses in the Milwaukee action, is that correct?

A. Possibly.

Q. You have already identified this \$1,000 cheque dated November 10, 1945.

HIS LORDSHIP: Q. Have you received anything since 1945? A. Yes, in 1945 we had a legal agreement.

40 MR. BROCK: Are the cheques going to be admitted into evidence?

HIS LORDSHIP: You asked they be filed.

MR. BROCK: My lord, my friend cross-examined on a cheque made payable to Mr. Poss or some one in Milwaukee. I do not see that cheque there.

MR. LOCHEAD: It is for \$1250.

MR. BROCK: It is endorsed by Mr. Poss.

MR. LOCHEAD: Now, to shorten it up, I take it since this agreement was entered into the payments have been made in accordance with that agreement?

A. Up until I got my last payment in March and the next one was in July, and I did not receive a payment and I have not heard about it and I wrote to one of my brothers about it; my brother Miles who is one of the
10 trustees.

Q. I believe he is actually looking after the trust?

A. Yes.

Q. The last payment you received before that was in March?

A. I believe so.

Q. Could it have been the 7th of April?

A. Yes, because I figured the next payment would be the 1st of July.

Q. Probably to be fair, my lord, I should produce this cheque. I am producing a cheque dated April 7,
20 1947, payable to Cynthia McKee in the amount of \$150. Is that your endorsement?

A. Yes, that was the last one I received.

---EXHIBIT 21: All cheques above referred to.

MR. LOCHEAD: Q. Now then, just to finish on the question of the trust, do you know these trusts were created for a period of 21 years which terminates in the year 1957?
A. No, I never was informed that.

Q. So you do not know whether you will be entitled
30 to the principal sum in 1957?

A. No, I did not have that information.

Q. For your information I will tell you your father will give evidence the trusts do terminate in 1957, and the principal amounts will be payable to the beneficiaries.

A. I am glad to hear it.

Q. In any event, will you take that money or refuse it?

A. I don't know if I will be living.

HIS LORDSHIP: She cannot say what she is going to
40 be doing in 1957.

MR. LOCHEAD: Q. Now, I believe when you were in Milwaukee you commenced an action against your father to enforce payments under this trust agreement?

A. That was part of the action. The first action was to investigate the trusts.

Q. The first action or the first part of the one action?

A. The first part of the one action.

Q. And I believe as a result of that an audit was ordered of your trust and all the others?

A. Yes, that is true.

Q. And the audit was taken?

A. I don't know, I think that an audit was commenced.

10 Q. Was the audit ever completed, did you get a report from the auditors? A. Yes.

Q. Is it not true that report indicated that five of your brothers and sisters had been paid more out of the trust than you had and the other five had not been paid as much?

A. I do not recall the exact amount. I know my sister Joanne and myself were paid the least.

Q. You say all the others were paid more than you and Joanne? A. Yes.

20 Q. And the eventual disposition of that action of yours, I suggest, was on the consent of all parties it was dismissed?

A. Yes, it was.

Q. Now then, Mrs. Pollock, do you recall how many of your brothers and sisters were living in the Azusa house with you early in September of 1941, that would be the month I believe before you left the Azusa house? A. Yes, I do recall.

Q. Who were they? A. My sister Joanne.

Q. And Julian? A. No.

30 Q. Peter? A. No.

Q. Julian and Peter were not there? A. No, when the school term closed in 1941 my little brothers Malcolm and Muir and Julian were sent to the Port Austin home, to the cottage for the summer, and I remained at the Azusa house with my sister Joanne and it was the understanding that my little brothers would go there for the summer and return for the school term in California that fall.

Q. As a matter of fact they did not return?

40 A. They did not because we had heard my father wouldn't let them return.

Q. So during 1941 in the summer there was just you and Joanne living in the Azusa house with Mrs. McKee and Jerry and Terry? A. As far as I recall.

Q. And I believe Joanne moved out of the house some time later?

A. She didn't move out of the house, she went to be married in 1942.

Q. What month was it? A. She was married in July but she didn't move from the Azusa house; Joanne lived with us in two homes in Pasadena.

Q. At that time you were living in the El Molino house? A. Yes.

Q. And you say she left just before she got married?

10 A. Yes.

Q. How about Peter, when did he leave your house?

A. As I say, the younger brothers they all left when the school term closed. Peter is Malcolm, that is his nickname.

Q. Oh, I am sorry.

Now then, when you were at McCarthy's ranch with Mrs. McKee what name were you using?

20 A. I used the name Cynthia Alexander and Cynthia McKee, both names. At times I went by Alexander to avoid confusion because mother would introduce me as her daughter and it would save a lot of explaining.

Q. Are you speaking now of McCarthy's ranch or generally? Have you gone generally by the name of Alexander? A. Other than when I sign any papers naturally it is McKee.

Q. Otherwise Alexander? A. Just to avoid confusion I go by Alexander.

30 Q. Now just a few more questions. You will recall yesterday or perhaps before I discussed at some length the question of the episode immediately after the divorce trial in 1942 when Terry was removed? A. Yes.

Q. And I believe as a result of that removal there were proceedings before Judge Clarke shortly after Terry was returned?

A. That is correct.

Q. And you were present? A. I was present when I was taken to the Court with Terry.

Q. You were taken to the Court? A. Yes.

Q. By whom? A. A sheriff's posse.

40 Q. Did you give evidence before Judge Clarke on that occasion? A. Yes, the Judge asked me why I took Terry.

Q. Is it not true the evidence you gave on that occasion was that you took Terry alone in a taxi?

A. Yes, from the El Molino house.

Q. You told the Judge you did it alone?

A. Yes, Judge Clarke asked me --

Q. For the moment I am just asking you if you said you took Terry alone in a taxi.

A. He asked me if anyone helped me take Terry from the El Molino house and I told him I took him alone in a taxi, which was true.

Q. Now then, isn't it true on that occasion the Judge threatened to commit you for contempt of Court?

A. That isn't the story I heard.

10 Q. You were there, isn't it true he threatened on that occasion to commit you for contempt of Court and your father's attorney requested him not to or words to that effect?

A. No, that is not the rendition I got.

MR. BROCK: What is that?

HIS LORDSHIP: I do not think he is entitled to go beyond that.

20 MR. LOCHEAD: Q. Now then, I believe you were in Milwaukee at the time of Mrs. McKee's action there against your father?

A. That is correct.

Q. Do you recall when Mrs. McKee appeared on an adverse examination?

A. I believe there were three or four days, that was in June and July 1944.

Q. In Milwaukee?

A. Yes.

MR. BROCK: Your lordship will note my objection.

HIS LORDSHIP: On what grounds?

MR. BROCK: This has all been gone into.

30 HIS LORDSHIP: She has only been asked if she was present when Mrs. McKee was examined.

MR. BROCK: I just wish your lordship would note my objection.

MR. LOCHEAD: My lord, if my friend is objecting I would like to know why.

HIS LORDSHIP: You had better object to the questions as they come along but what possible objection could there be to a question whether she was present on the occasion in Milwaukee?

40 MR. BROCK: I will let my friend proceed then.

MR. LOCHEAD: Then, Mrs. Pollock, perhaps I can help you by attempting to recall what happened. I am suggesting to you that Mrs. McKee was examined on what is called in the United States an adverse examination on four or five days and that you were present on at least some of those days while she was being examined?

A. I recall being present at some hearings when there was a commissioner.

Q. That is the hearing I have in mind but I want to make sure we are talking about the same thing. Perhaps I can assist you further by recalling that Mrs. McKee was examined by Mr. Poss and that you were present?

10 A. I recall being present for part of it. I was working at the time.

Q. You were present for part of it and I suggest to you you were present by way of assisting Mrs. McKee on that examination. Is that not right?

A. No, not that I know of.

Q. Why were you present? A. Because I accompanied my mother.

Q. You always accompanied her? A. Naturally.

20 Q. Now then, do you remember, Mrs. Pollock, that evidence was taken in this proceeding on commission in California during May and June of this year?

A. You mean the coloured people's testimony?

Q. Yes, that was one session. You were present on that occasion? A. Yes.

Q. That was, I believe, towards the end of May of this year? A. Yes.

Q. And that was in San Bernandino? A. Yes.

Q. Which is how far from Los Angeles?

A. Roughly I would say 50 miles northeast of Los Angeles.

30 Q. Were you present on a subsequent hearing of a commission in Los Angeles?

A. I was until I was asked to leave, by my father's attorney.

Q. Isn't it true your father's attorney asked you to be either excluded or associated on the record with Mr. Cloud?

A. He made that statement.

40 Q. Isn't it true on both occasions when you were present on the commission you endeavoured to assist Mr. Cloud in his examination of witnesses?

A. I gave him information regarding the lay-out of the McCarthy ranch.

Q. Is that the only information you gave him?

A. As far as I recall just things about the ranch, where the rooms were, and the lay-out of the ranch.

Q. I suggest to you during the entire examination

you were passing notes to Mr. Cloud giving him information on which he based his cross-examination, is that correct?

A. No, definitely not.

Q. By the way, Mrs. Pollock, when is the last time that you have been in communication by letter with your father, do you remember?

A. I have never written a letter to my father in
10 my life that I recall.

Q. When is the last time you spoke to your father?

A. When he disowned me in 1941.

Q. I believe you did not even inform your father of your marriage to Mr. Pollock?

A. I didn't think it would be of any interest to him.

Q. I am not asking you what you thought.

HIS LORDSHIP: She says she has never written to him nor spoken to him since 1941 so I suppose you might
20 confine your questions to telephone conversations.

THE WITNESS: I didn't telegraph him.

MR. LOCHEAD: You didn't inform him in any way?

A. I did not.

Q. Now, there have been put in evidence the Toronto Daily Star of September 18 of this year and the Detroit News of September 4 of this year and I show them to you. The only point I have reference to in both of these newspapers is that you are referred to as Cynthia
30 McKee. Can you explain why?

A. Because I was introduced by my mother, she introduced me as her daughter Cynthia and no last name was given.

Q. You didn't do anything to inform them your last name was not McKee?

A. They didn't ask me if it was so or was not.

Q. You know your father's two brothers and sister live in and around Detroit?

A. Yes, I do.

Q. And they have children who live around Detroit?

A. Yes, large families.
40

Q. A number of your brothers and sisters live in and around Detroit? A. Yes.

Q. This episode would be very distasteful to them?

A. It is distasteful to all of us.

---Witness withdrew.

MR. BROCK: My lord, I think that will conclude the case.

HIS LORDSHIP: Do you wish to conclude now?

MR. BROCK: I would rather wait until Monday.

MR. LOCHEAD: My lord, if it will be of any assistance to the Court or my learned friend, if my friend has closed his case --

HIS LORDSHIP: He thinks he has.

10 MR. LOCHEAD: I anticipate a substantial part of Monday will be taken up by documentary evidence.

MR. BROCK: I am not going to close my case. I will inform Mr. Lohead regarding it.

---The Court was then adjourned until September 29, 1947, at 10.30 o'clock a.m.

20 HIS LORDSHIP: Now, Mr. Brock, where do you stand?

MR. BROCK: My lord, I had informed counsel for Mark T. McKee over the week-end that I proposed to read into the evidence certain parts of the California law.

HIS LORDSHIP: I do not think that is properly evidence, is it?

MR. BROCK: It is in this case. It was stipulated by counsel who appeared on the execution of the commission in California that that is the book.

30 HIS LORDSHIP: You have evidence from a lawyer in California?

MR. BROCK: Yes, my lord.

HIS LORDSHIP: I think you can put that in if you want to.

MR. LOCHEAD: My lord, if I may so, with great respect, I would have no objection to my friend reading from the commission any evidence that was taken. I don't think he should refer to that now. It has been proved by experts. My submission is that these matters should be referred to in argument.

40 HIS LORDSHIP: I suppose if he wants to put that part of the evidence in he can do it. You had better tell me what you are reading from, Mr. Brock.

MR. BROCK: The examination Archibald H. Vernon in the second volume of the depositions taken in California at page 227. I wish to read the following extracts. At page 227, lines 17 to 21. At page 228 and 229,

lines 25 and 26 and on page 229, lines 1 to 12.

In pursuance to that, my lord, and perhaps to assist your lordship, I would like to read into the evidence three sections of the Code.

HIS LORDSHIP: Why not just refer them to me? I take it that is the edition of the Code that was identified by the California lawyer?

MR. BROCK: Yes. I would refer your lordship to 10 sections 128, 129 and 138. Would your lordship care for me to read it?

HIS LORDSHIP: I want to read them.

MR. BROCK: That concludes the case in chief, my lord.

HIS LORDSHIP: Mr. Lothead?

MR. LOCHEAD: As I indicated to your lordship at the close of Court on Friday, I anticipate the rest of to-day will be taken up with documentary evidence and the first matter to which I wish to refer is an exemplification of the findings of fact, conclusions of law and judgment in the California courts following the 20 divorce action in 1942. That is the exemplification, my lord.

---EXHIBIT 22: Exemplification of the findings of fact, conclusions of law and judgment in the California courts following the divorce action in 1942.

30 ^{By code} MR. LOCHEAD: My lord, you will note my objection to the admission of this.

HIS LORDSHIP: Yes, Mr. Brock.

MR. LOCHEAD: My lord, probably your lordship does not wish the question to be argued at the moment but I might point out on two separate occasions when evidence was taken on commission in California it was specifically stated by both parties that the exemplifications would be admissible here.

40 HIS LORDSHIP: Subject to Mr. Brock's general objection on which I want to hear argument.

MR. LOCHEAD: Yes, my lord.

I propose, my lord, with your lordship's approval, to read the entire document. It is fairly lengthy but I believe it will be of assistance to your lordship in the disposition of this issue.

MR. BROCK: My lord, I object to the reading of this

document.

HIS LORDSHIP: I think I have to judge that, I want to hear it.

MR. LOCHEAD: I might recall to your lordship my friend opened his case by reading the order of 1945 in full.

---Exhibit No. 22 was then read to the Court.

10

HIS LORDSHIP: Before you go on I have just been glancing through this and what benefit is that to me now? This happened in 1942 and I think it is admitted that your client was able to satisfy the Court that he was entitled to a decree he was asking for and I presume he established some issue between Mrs. McKee and the co-respondent. Are you seriously suggesting that makes her unfit to have this child now?

20 MR. LOCHEAD: No, my lord. I am not suggesting what happened between the plaintiff in these proceedings and the man referred to in this judgment of itself makes her unfit to look after the child but it will be my respectful submission that those findings at that time, when tied up with the evidence which I will present to your lordship by commission and by oral testimony before your lordship indicates a steady course of conduct which does make the plaintiff unfit.

HIS LORDSHIP: I see, and this is the foundation you are laying.

30

MR. LOCHEAD: Yes, my lord, and there will be oral testimony submitted on behalf of the defendant which I submit indicates a course of conduct and for that reason we are entitled to go back to what might be termed the origins of this course of conduct. When it indicates a course of conduct which extended over a considerable period of time and continued, not with the same man, I submit it becomes most relevant to the determination of the issues before your lordship.

HIS LORDSHIP: All right, go ahead.

40

---(Mr. Lohead reads findings of fact in the California action.)

MR. LOCHEAD: Then, my lord, there will be numerous references to this judgment. It is fairly short and with your lordship's permission I would like to read the oral judgment entered into at that time.

---(Mr. Lochead reads oral judgment above referred to in California action.)

MR. LOCHEAD: Then, my lord, I believe it was stated by myself and agreed to my learned friend that the judgment had been made absolute. I believe the date was referred to at that time.

HIS LORDSHIP: It appears to be the 3rd of February, 10 1944.

MR. LOCHEAD: Oh, yes, I believe it is on that exemplification.

MR. BROCK: And that the final judgment was issued at the request of Joseph Scott, attorney for Mr. McKee.

HIS LORDSHIP: It says so on it, it was filed at the request of Joseph Scott, attorney for the defendant and cross-complainant.

MR. LOCHEAD: Now, my lord, I have also an exemplification most of which your lordship will be pleased to 20 know I do not propose to read. It is the summons and complaint with exhibits thereto attached in the action commenced by Mrs. McKee against Mr. McKee in Milwaukee.

MR. BROCK: Is there any point in cluttering the record up with it?

HIS LORDSHIP: You are not raising any objection to the jurisdiction of the Court of California. You both agree that it is binding on the parties.

MR. BROCK: Yes, my lord.

HIS LORDSHIP: Then, is there any great advantage 30 in putting the Wisconsin judgment on the record? I suppose perhaps you had better put it in; one of the matters I have to concern myself with is the jurisdiction of the Court in California to make an order in 1945.

MR. LOCHEAD: Your lordship will recall, subject to my friend's objection, the reason for tendering the Milwaukee proceedings was on the question of Mrs. McKee's credibility. Your lordship will recall I questioned Mrs. McKee at considerable length as to this Milwaukee 40 action.

HIS LORDSHIP: I take it the facts were that Mr. McKee was a resident of Milwaukee and the child was there.

MR. LOCHEAD: Yes, my lord, and the action was brought, of course the action was to obtain custody of Terry but in order to do so or at least support for

such an action she made certain allegations. She made allegations of fraud and collusion against the Court of Appeal and so on. While they comment on it, I would like to have on record the actual complaint she made at that time.

HIS LORDSHIP: Yes, I take it this is subject to your objection.

MR. BROCK: Yes, my lord.

10 MR. LOCHEAD: I may say, my lord, that this exemplification also includes two interlocutory orders that were made in the Milwaukee action. I will read them if your lordship wishes. The first order was giving Mrs. McKee permission to take Terry out of Wisconsin to Michigan and the second was giving her permission to take Terry to California.

HIS LORDSHIP: Mrs. McKee says the original arrangement was altered all through the proceedings until after the dismissal of the 1945 proceedings in the Court of
20 Appeal.

MR. LOCHEAD: There are a few paragraphs of this complaint I would like to read into the record.

MR. BROCK: I shall not object to that.

HIS LORDSHIP: That is not a matter you are entitled to comment on. If Mr. Lohead has an order it will appear in time and you may be very glad to discover it. I think he has to be allowed to establish his case as he wishes.

30 MR. LOCHEAD: I wish to read first, my lord, from what is called the second cause of action, that is the one having to do with Mrs. McKee's attack on the jurisdiction of the California Courts in 1942 because of non-residence. I wish to read from the second cause of action and commence on page 4 of the complaint and I propose, my lord, that, with your lordship's permission, I will read paragraphs 13 to 18 inclusive which will commence at page 8.

40 --- (Mr. Lohead reads paragraphs 13 to 18 of the complaint above referred to.)

HIS LORDSHIP: Now, you both told me you were not attacking the first California judgment. Is there any point in putting this in?

MR. LOCHEAD: I am not putting this in for the purpose of a collateral attack on the California judgment.

HIS LORDSHIP: After all, she did not draw the pleadings, they were drawn by the attorneys on her instructions.

MR. LOCHEAD: She swore to them entirely.

HIS LORDSHIP: I know, but you prepare affidavits for your clients and say "Is this all right", and they swear to it. I do not regard it as having a great deal of bearing on her credibility.

10 MR. LOCHEAD: Perhaps I may leave it by having reference noted in the record of paragraphs 13 to 18 inclusive of the second cause of action.

Then, my lord, the fourth cause of action, which is the one containing the allegations of fraud and perjury, commences on page 14.

HIS LORDSHIP: I think she admitted it, did she not? You put those things to her and in fact she says they are still true and she says it on what I can only regard as the flimsiest grounds but she believes it herself apparently.

MR. LOCHEAD: There are two or three sub-paragraphs of paragraph 3 of the fourth cause of action which I would like to read unless your lordship would rather I just refer to them.

HIS LORDSHIP: No.

MR. LOCHEAD: Then, reading if I may, my lord, paragraph 3, sub-paragraph 2, on pages 14 and 15.

30 --- (Paragraph 3, sub-paragraph 2, of fourth cause of action read to the Court by Mr. Lothead.)

HIS LORDSHIP: You put all that to her in your cross-examination.

MR. LOCHEAD: Substantially, my lord.

HIS LORDSHIP: If you are putting the document in is there any point in labouring it?

MR. LOCHEAD: Very well, my lord. In the same manner might I refer to paragraph 3, sub-paragraph 4 on pages 17 and 18. Your lordship will observe sub-paragraph 4 commences on page 15 and on page 17 there is also a number 4. It is the second number 4 to which I have reference.

HIS LORDSHIP: Those are allegations against her original counsel in California?

MR. LOCHEAD: Yes, my lord. I also wish to refer to sub-paragraph 5 on page 18 which contains the allegations as to payment of money to her attorneys and to

paragraph 6 on page 18 which contains the allegations as to perjury, and to paragraph 7, part of which is on page 18 and part on page 19.

HIS LORDSHIP: It goes on to page 20.

MR. LOCHEAD: Yes, my lord. Your lordship will recall that is the paragraph in which Mrs. McKee charged Mr. McKee with domination and control of the judge in obtaining a finding as to her residence in California.
10 Then, I would respectfully direct your lordship's attention to Exhibit B to the complaint.

Unfortunately, my lord, the pages do not continue to be numbered. Exhibit B is five pages after the complaint.

Now, my lord, I submit that this exhibit is rather important. It is a copy of the order of June 28, 1943. You will recall there was considerable reference to that in cross-examination, and skipping the preliminaries of the order I would like to read the findings
20 which commence about the middle of page 2 of the order.

---EXHIBIT 23: Order of June 28, 1943, above referred to.

---(Above order read to the Court by Mr. Lothead.)

---A short adjournment.

MR. LOCHEAD: I have just one more exemplification to present to your lordship and that is an exemplification of the order of the Milwaukee Court dated June 28,
30 1945, dismissing the action with prejudice.

HIS LORDSHIP: Is that after the California judgment or before?

A. It was after the conclusion of the hearing, my lord, before the date of the formal order. The formal order was dated August 1st, 1945, and the hearing was completed some few days prior to this order.

---EXHIBIT 24: Exemplification of order dated
June 28, 1945.

40 MR. BROCK: I might point out to your lordship that is referred to in Exhibit 2, the judgment of the California Court.

HIS LORDSHIP: Yes, it was the action they required to be dismissed.

MR. BROCK: Yes, my lord.

MR. LOCHEAD: Then, my lord, if I may turn to the

evidence taken on commission in these proceedings and by way of introduction, my lord, I would like to read firstly pages 2 and 3.

HIS LORDSHIP: What is this?

MR. LOCHEAD: The evidence taken on commission.

HIS LORDSHIP: Who are the witnesses?

MR. LOCHEAD: I am reading by way of introduction certain stipulations as to admissibility. I think it is well for your lordship to know the basis upon which this evidence was admitted.

MR. BROCK: I would ask my friend if this is the evidence that was brought forth in the hearing in October and November of 1942, the original divorce hearing which my friend has admitted.

HIS LORDSHIP: He is not reading any evidence. He is reading certain stipulations as to admissibility.

MR. BROCK: If my friend will read the pages which reserve for me the right to object to the admissibility of any of this evidence.

HIS LORDSHIP: I think that always exists.

MR. LOCHEAD: I believe so. They made it very clear in this case.

---(Mr. Lohead reads stipulations on pages 2 and 3 of commission evidence taken in California.)

Then, with your lordship's approval, I propose to submit the evidence that was taken on commission in California, not necessarily in the order which it was taken there. If I may, my lord, I would like to submit it to your lordship in chronological order and first, my lord, I would refer you to page 314 of the commission which is just at the end of volume 2. I propose, my lord, to read all of pages 314, 315 and 316.

---(Mr. Lohead reads commission evidence above referred to.)

HIS LORDSHIP: Now, what is this you are attempting to put in? If that is transcript of the divorce proceedings I told you I was not going to look at it.

MR. LOCHEAD: No, my lord, it is a transcript of proceedings of February 25. There are certain matters in that transcript I referred to in cross-examination of Mrs. McKee and which I will refer to in the transcript.

Perhaps we can take the transcript as read. If my friend wishes me to read it I will do it.

MR. BROCK: My friend, counsel for Mark T. McKee --

HIS LORDSHIP: There are only two parties to this action so I have no doubt whom your friend is acting for.

MR. BROCK: He wishes to offer in evidence the whole proceedings taken on February 25, 1947.

10 MR. LOCHEAD: Yes, I am quite willing to read them if my friend wishes. Your lordship can take them as read.

HIS LORDSHIP: I think I can.

MR. LOCHEAD: Then, my lord, there were certain stipulations as to American authorities which were made by counsel on the commission and I would refer your lordship firstly to page 529 of the commission which is in volume 4. I propose to read from line 11 of that page to and including line 24 of page 530.

20 --- (Above pages of commission read to the Court by Mr. Lohead.)

MR. LOCHEAD: Then, perhaps I had better go on, my lord, since I referred to this in connection with my friend's objection to the exemplification and continue to read the balance of page 530 and all of page 531.

--- (Above evidence read to the Court by Mr. Lohead.)

30 MR. LOCHEAD: Then, I propose to read, my lord, page 229 of volume 2, line 13 of page 229 to line 11 of page 230 inclusive.

I should have pointed out, my lord, that is part of the examination of Mr. Vernon. He was called by us as an expert of California law.

--- (Above commission evidence read to the Court by Mr. Lohead.)

40 MR. LOCHEAD: Now, my lord, I wish to refer to the evidence that was taken on commission of Bernard J. Cunningham. My lord, my reference to that evidence will be very lengthy.

HIS LORDSHIP: I suppose you might as well start after 2.30. It is nearly one o'clock now. Where is it, by the way?

MR. LOCHEAD: It is in volume 3, my lord.

MR. BROCK: My lord, that was evidence adduced at the trial in 1942.

HIS LORDSHIP: Then, I suppose it is subject to your objection that it relates to matters prior to the hearing in 1945.

MR. BROCK: It was the same evidence as was given in 1942 in the original divorce proceeding.

10 HIS LORDSHIP: If it relates to matters at that time I take it it is admissible, depending substantially on you establishing the proposition you have made to me and establishing the validity of the proceedings in California in 1945.

MR. BROCK: My lord, I submit the judgment of the California Court rendered on August 1st, 1945, stands until it is shown there is something wrong.

HIS LORDSHIP: I do not know about that. There has been no evidence before me as to its validity at all.
20 It depends on other matters than the California law. As far as I am concerned it depends on Ontario law. I think the simplest way of handling it is to let this evidence in subject to your objections and before the case is over I trust I will be able to find out what is the status of it.

MR. BROCK: My learned friend has admitted the California judgment of December, 1942, is a valid judgment.

HIS LORDSHIP: You both told me you were not attacking that. It does not necessarily follow that the 1945 proceedings are valid.
30

MR. BROCK: That is not my point. My point is if the judgment of 1942 was valid then any evidence adduced on that hearing or which ought to have been raised, is now res judicata and it will only cloud the issue to permit it to be introduced at all.

HIS LORDSHIP: Mr. Lohead, are you prepared to argue this question? I am not asking you at this point to argue the validity of the 1945 judgment. I think that
40 depends on matters you may adduce in evidence but what about the general proposition Mr. Brock has made that I am not entitled to go into it assuming there is a valid judgment for custody. Am I entitled to go behind that or go into matters that were raised at that hearing now on a further application for modification of custody?

MR. LOCHEAD: My lord, I submit that you are.

HIS LORDSHIP: I am going to hear you now. I think it might be well to hear argument on that and clear that up if possible before we go on.

MR. LOCHEAD: Yes, my lord, I would like to state my position clearly for the record as to the 1942 judgment. I do not propose to attack its validity.

10 HIS LORDSHIP: No, but I have to assume you cannot have it both ways, and if both of you are accepting that judgment, as you evidently are, then it dealt with custody of this child at that time. The point is, am I entitled to go behind it on the question of custody now?

MR. LOCHEAD: I submit you are.

20 HIS LORDSHIP: I have cases cited to me from the Supreme Court of Saskatchewan which would suggest I should not. I think there is no point in cluttering up the record with that evidence if I am not entitled to admit it.

MR. LOCHEAD: Yes, my lord, I am prepared to argue on the proposition.

HIS LORDSHIP: Would you be ready to be heard at 2.30?

MR. LOCHEAD: I think so, my lord.

HIS LORDSHIP: We have come to the point now where I should make up my mind for better or worse on that point of it.

30 MR. LOCHEAD: As I understand it your lordship is asking us to discuss it on the basis there is a valid judgment.

HIS LORDSHIP: There is a valid judgment in 1942 dealing with custody. Now, am I entitled to look at what happened before 1942?

MR. LOCHEAD: I submit that you are.

HIS LORDSHIP: I will hear argument on that at 2:30.

---The Court then adjourned until 2:30 o'clock p.m.

40 ---The Court resumed at 2:30 o'clock p.m.

HIS LORDSHIP: Well now, Mr. Lohead, what about this problem we have?

MR. LOCHEAD: My lord, as I understand the problem

presently before your lordship is this, assuming that the 1942 decree is valid is it an enforceable judgment to the extent of being res judicata on matters being raised up to that time.

My lord, if I might submit my argument in favour of evidence occurring prior to that judgment firstly in reference to two general principles and secondly in reference to certain cases in Ontario in which this point
 10 has been discussed, and the first principle I submit to your lordship is in order for a judgment to be enforceable here and res judicata it must be a judgment for a debt and it must be a final and conclusive judgment. As authority for that proposition I would refer your lordship to the 5th Edition of Dicey, Conflict of Laws at pages 465 to 466, my lord, where it sets out Rule 114, which reads as follows:

"Subject to the Exception hereinafter mentioned,
 20 a valid foreign judgment in personam may be enforced by an action for an amount due under it for a judgment as

- (1) for a debt (n) or definite sum of money, and
- (2) final and conclusive (o) but not otherwise."

HIS LORDSHIP: Isn't any judgment for custody final and conclusive at the time? It is not an interlocutory judgment, it is a judgment, a final judgment which is subject to change if the circumstances change. Isn't that the definition of any judgment of this sort?

MR. LOCHEAD: Yes, my lord, and while of course it
 30 is not interlocutory it is not final within that rule of Dicey's.

HIS LORDSHIP: Would it not be in the same position as a judgment for alimony which is subject to variation if circumstances change?

MR. LOCHEAD: Yes, my lord, and I submit for purpose of use of the word "final", a judgment for custody is not of the final and conclusive type required to be res judicata here. There is a rather interesting distinction, my lord, in a footnote of a few sentences of an
 40 English case, Beattie v. Beattie. In that case there was an action in England on a New York alimony decree and there was no question as to the validity of that decree and the husband defended the action on the ground that the judgment was not final and conclusive. Expert evidence was adduced as to the law in New York at that time, my lord, which was that an alimony judgment is

final. In September, 1947, the parties cannot go back and question the amount of alimony in August, 1947.

HIS LORDSHIP: By analogy are you not in the same position on custody.

MR. LOCHEAD: I submit not, my lord.

HIS LORDSHIP: Am I entitled to go into this; that is what I am worried about.

10 MR. LOCHEAD: My submission on that principle, my lord, is that a custody decree is not of the type that is final and conclusive at any time.

HIS LORDSHIP: Is there any help to be gained by consideration of cases in Ontario where there have been foreign decrees in custody? Is there a discussion of the weight put on foreign decrees?

20 MR. LOCHEAD: Various expressions are used but the most general expression is that of "great weight" and the Courts do hold that a foreign decree, whether an American State or one of the other provinces is certainly not entitled to be forced as such, it is simply to be entitled to consideration as a matter of evidence.

HIS LORDSHIP: There is a distinction, suppose we were dealing here with an order of this Court on custody, what would you say the rights were to go behind it?

30 MR. LOCHEAD: I believe that the cases in Ontario would hold that it was res judicata; that is a decree of the same Court, subject of course to the general rule of evidence which could not have been discovered with reasonable diligence.

HIS LORDSHIP: Assuming this was evidence used on a hearing of a divorce trial and an order for custody is made, I take it that the rule which Mr. Brock referred to us the other day in the judgment of Mr. Justice Martin in the Wallace case is that this Court will not go behind its own orders and permit them to be raised. Is there any distinction if the order is not an order of this Court and is an order of a foreign Court.

40 MR. LOCHEAD: In general principle there is this distinction, my lord, that an order of an Ontario Court is enforceable per se, whereas an order of a foreign Court is not enforceable, and therefore if it is not enforceable it cannot be considered as res judicata, and I have several cases which I wish to refer to your lordship which clearly bear out that proposition.

Perhaps the best case of all, my lord, on that point

is the case of *Re Gay*, 59 O.L.R., at page 40, a decision, my lord, of the Appellate Division. It was an appeal from a judgment of a Surrogate Judge holding a Michigan decree of divorce and custody was enforceable here. Perhaps the most illuminating paragraphs of Mr. Justice Middleton's judgment are at pages 42 and 43, where his lordship says:

10 "The foreign guardian has no absolute right as such under the judgment of the foreign Court in this country. The decree of the foreign court is entitled to great weight in determining the custody here.

20 Also, upon a narrower principle I think the judgment of the Michigan Court is not entitled to the effect given it by the judgment in review. It is not in itself, nor upon its face, final. It determines nothing as to the custody of the infants save at the time of its making, for it reserves liberty to either party to apply for variation. No matter what the form, this is necessarily the case in all orders dealing with the custody of children -- they are not in their nature final. The courts of this country must always exercise the jurisdiction conferred upon them in regard to the custody of infants within its jurisdiction according to the laws of the country."

30 In other words I submit Mr. Justice Middleton clearly holds that any foreign decree as to custody has no greater consideration to be attached to it in the Courts of this province than to be entitled to some great weight but purely as a matter of evidence.

40 There are other cases of a similar nature, my lord. There is the rather interesting case of *Re E*. That case is noted in 1921, 19 Ontario Weekly Notes at page 534, a decision of Mr. Justice Rose, as I believe he then was, and it was confirmed without reasons by the Court of Appeal and is noted at 20 O.W.N. at page 92. In that case, my lord, a decree of divorce and custody of the children had been given to the father by the Court in Manitoba and the wife had appeared by counsel in that action. The wife remarried and the father brought habeas corpus proceedings in Ontario for custody. The facts indicate that the habeas corpus action was brought almost immediately after the Manitoba decree;

as a matter of fact the divorce proceedings in Manitoba were instituted in October 1919 and the decree nisi was dated February 26, 1920. No cause being shown, on September 22, 1920 the decree was made absolute. On April 20 the wife remarried and these proceedings were heard by Mr. Justice Rose on February 4, 1921, so in the nature of things there couldn't have been much change in the circumstances, and that is borne out in
 10 the first paragraph at page 536:

"The evidence satisfied the learned Judge that, at least during the years immediately preceding the separation, the man was guilty of cruelty to his wife and child",

indicating, my lord, that his lordship did go into the facts prior to the divorce decree.

HIS LORDSHIP: The divorce judgment in Manitoba had dealt with custody, had it?

20 MR. LOCHEAD: Yes, my lord. The decree nisi was granted on the 26th of February, 1920, and also declared the father entitled to custody of the child.

Then, Mr. Justice Rose's judgment at page 536, my lord:

30 "The man's application was based largely upon a legal right supposed to have been conferred by the Manitoba decree. It was not necessary to consider the question of jurisdiction of the Manitoba court. The matter to be determined was not any proprietary right of either of the contending parties, but the order that ought to be made regarding the custody of an infant, having regard to her welfare and to the conduct of the parents and to the wishes as well of the mother as of the father."

Then his lordship makes reference to the Infants Act:

40 "Great weight ought to be given to the court of the domicile of the parties; Re Ethel Davis (1894) 25 O.R. 579; but the guardian named by the foreign court has no absolute right as such in this province."

Now, that is a case, my lord, dealing with a decree of another province in Canada.

Then with regard to cases in our courts in which there was a prior decree of the American jurisdiction, my lord, there is a case of In re Kinney, 1875 Practice

Reports, at page 245. In that case the mother had obtained an order in a Michigan court as to custody. The court refused to enforce the order and again there was reference to the fact that by the law of Michigan the order was not final and no order was made here at all.

10 There is a further case, my lord, in the British Columbia courts, re: Snyder, reported at 1927, 3 D.L.R. at page 151.

That, my lord, is a decision of the British Columbia Court of Appeal and in that case there had been a prior decree of the courts of Ohio as to custody and there was an application in the British Columbia courts.

The headnote on page 151, my lord, reads as follows:

20 "A Canadian court may award the custody of infants
"within its jurisdiction to the person to whom it
"seems in the best interest of the infants to
"award such custody notwithstanding the decree of
"a foreign court awarding custody otherwise."

It is noteworthy, my lord, in all these cases there is no question as to the validity of the foreign decrees, the validity was either established or assumed.

Then, if I may, my lord, read from the judgment of His Lordship Chief Justice MacDonald at pages 152 to 153:

30 "Thus it appears that both here and in the U.S. the
"power and right is recognized of a court of the
"country in which the infant is found to appoint
"a guardian notwithstanding that the guardian may
"have been appointed in another country. Nor is
"it disputed that the paramount consideration,
"paying due respect to the law of Nations, is the
"best interests of the infant."

Then, some assistance may be gleaned from the judgment of His Lordship Mr. Justice MacPhillips at pages 154 and 155:

40 "The opinion of the judge in the court below is,
"that were it not for the decree of the court of
"the State of Ohio giving the custody of the
"children to the wife, or more properly, the now
"divorced wife of the appellant, the father of
"the children should have their custody, the
"judge being of the opinion that as a matter of
"comity, the decree of Ohio should prevail."

Then his lordship goes on to refer to the British

Columbia statute, my lord, which is analagous to our Infants Act:

10 "There only remains, then, the one point as to the
 "efficacy of the Ohio decree, as I agree that if
 "the decree should not be deemed a bar, the father
 " should have the custody of the children. We are
 "not affected in any way by any matter of comity,
 "the children are in this province with the father,
 "and are being well cared for, a good home and all
 "proper provision for care, maintenance and
 "education."

Further on he says:

"I do not feel that there is any obligation
 "whatever to heed this decree or give it any
 "consideration in the matter now before us.
 "Foreign decrees, with the greatest respect to all
 "foreign jurisdictions, cannot be allowed to
 "interfere with the policy of this jurisdiction."
 20 There is just one more case, my lord, which may be
 of interest to your lordship. It is a decision of the
 Nova Scotia Supreme Court and is reported at 13 D.L.R.'s
 at page 811. It is the case of Chisholm and in that case
 the father left the mother in Montana and took the three
 children to Nova Scotia appointing the brother to be
 guardian. The appeal was dismissed. A rather illuminat-
 ing sentence in the judgment of Chief Justice Townsend is
 where his lordship says with regard to a finding made by
 a foreign court: "We feel we are not bound".

30 HIS LORDSHIP: I suppose your argument briefly is if
 I am not bound by the California judgment then I am
 entitled to look at all the circumstances to see what
 is best for the infant.

MR. LOCHEAD: Yes, my lord, the Ontario courts will
 at all times exercise their discretion as ex parent.
 I submit to argue otherwise is to place oneself in this
 dilemma, either a foreign decree is enforceable, which
 it clearly is not, or it is not enforceable and has not
 more consideration from your lordship than a mere matter
 40 of evidence.

HIS LORDSHIP: Mr. Brock, have you something to say?

MR. BROCK: My lord, I submit that since the judgment
 of 1942, that is the judgment for divorce and custody
 which has been granted after a long hearing and in view
 of the fact that it is recognized, agreed to be valid,
 and binding on the parties, then, my lord, I submit

that any evidence adduced at that hearing or any matters which ought to have been raised at that hearing are now res judicata.

HIS LORDSHIP: If I am not bound by the judgment in 1942 and I am not now discussing anything else, can I come to a proper conclusion on the principles laid down in the Infants Act unless I permit the widest investigation of the standing and conduct of both parties.

10 What other basis have I for coming to a proper decision? I either have to rely on the findings there, which I think most of the authorities say I should not do, or I have to look at what evidence is put before me afresh.

MR. BROCK: On a general principle, my lord, if part of the evidence at the prior hearing is allowed to be heard without the whole of it --

HIS LORDSHIP: That is up to you. You are acting for your clients and Mr. Lohead is acting for his and you are both free to introduce what evidence you deem
20 proper. That is your responsibility as counsel.

MR. BROCK: I submit, my lord, that this judgment, being agreed to be valid, determines the rights of the parties as at the time of its making.

HIS LORDSHIP: It may have determined them in 1942, I grant you, but have I to do more than give it respect or great weight, whatever you want to say? Am I not then constrained to say if I must decide the matter de nova, am I not entitled to look at anything which may tell me which custody would be the most beneficial
30 for this child?

MR. BROCK: But, my lord, we have agreed that the judgment of the court of California in 1942 is a valid judgment.

HIS LORDSHIP: It is valid as of 1942 for what it was worth then, but it has not a binding effect on me that a judgment of this court would have. Is that not the distinction?

MR. BROCK: No, my lord, I submit that it is final insofar as up to the time of its making as set out in
40 the case of Re Gay, and I would like to point out that in the case of Re E., O.W.N., 19, page 534, I think you will find the wife did not attend herself and the notice which was served on her did not mention custody.

MR. LOCHEAD: I didn't say she attended.

HIS LORDSHIP: The judgment dealt with custody, that is the point that Mr. Lohead made.

MR. BROCK: Although she was represented by counsel, she did not attend herself.

HIS LORDSHIP: I do not think that makes the slightest difference at all if the judgment dealt with custody.

MR. BROCK: I have not the case here, my lord.

HIS LORDSHIP: If you can throw any more light on it I would like you to.

10 MR. BROCK: The woman said, and there was no contradiction of her evidence, that the notice served on her made no reference to custody, she did not know that was an issue.

HIS LORDSHIP: But she appeared by counsel.

MR. BROCK: Yes, my lord.

HIS LORDSHIP: I think she is bound by her appearance.

MR. BROCK: Then, my lord, I refer you to the case of Menery v. Menery cited in 1942 O.W.N. at page 417, in which Robertson, C.J.O., said:

20 "The court was of the opinion that the order sought "to be appealed from was not interlocutory, in the "sense of leaving the parties to return and do something more. It finally determined the rights to "custody of a child at the time it was made, and if "the applicants' argument were to prevail, there "could never be a final order in such cases."

HIS LORDSHIP: That is right, it is a final judgment in one sense but it is not final in the sense that it cannot be reconsidered.

30 MR. BROCK: I submit, my lord, that is under the same exception to Rule 114 as one of alimony or maintenance. I submit, my lord, that having been adjudicated upon and heard by the California courts, the judgment having been agreed to be valid and binding on the parties, that this court should not go into the evidence which was heard at that hearing.

HIS LORDSHIP: Mr. Lohead, may I look at the Gay decision for a minute?

MR. LOCHEAD: Yes, my lord.

40 HIS LORDSHIP: May I see a transcript of the 1942 judgment, Exhibit 22.

Had you anything else you wanted to say, Mr. Lohead?

MR. LOCHEAD: No, my lord, with this exception. It might be of assistance to refer to the fact that the 1942 judgment really stands, I would submit, on two separate grounds. Our agreement is that as a judgment of divorce it is valid and that neither party is going

to attack it in this issue. As a judgment of divorce it is a judgment in rem and is binding on the full world. On the question of custody it is a judgment in personam and therefore has to be considered by rule 114 of Dicey and the cases I submitted to your lordship.

HIS LORDSHIP: There were subsequent proceedings in California.

10 MR. LOCHEAD: There were two interlocutory proceedings.

HIS LORDSHIP: The same court dealt with custody in 1943.

MR. LOCHEAD: Yes, my lord, there is evidence that the position of custody decrees in California is virtually the same as here. Exhibit C is another interlocutory order of the California decision.

20 HIS LORDSHIP: Well, I think I must admit this evidence. It seems to me I cannot come to any proper conclusion under the terms of the Infants Act unless there is the widest investigation into the suitability of the parties to have the custody of the child and therefore I propose to admit it. I take it, Mr. Brock, I will note your objections if you will just make them from time to time.

MR. BROCK: Yes, I wish you would, your lordship.

30 MR. LOCHEAD: My lord, before proceeding to read further evidence from the commission, it came to my attention during the noon recess there was a witness I proposed to call present from Kitchener. In order to save having him come down again I would like to call him now.

HIS LORDSHIP: Yes.

ARTHUR BOWMAN, sworn,

---EXAMINED BY MR. LOCHEAD:

- 40 Q. Where do you live? A. In Waterloo.
Q. What is your occupation? A. I work on heating service.
Q. I believe that your wife is related to Mr. McKee's first wife, is that right?
A. That is right.
Q. What was the relationship? A. Second

cousin of hers, I believe.

Q. Do you know Mr. McKee? A. Well, I have met him and been around with him some this last while.

Q. When did you first meet him? A. About five years ago.

Q. Where? A. At my wife's mother's place.

Q. Is that in the county of Waterloo?

A. Yes, on Union Street, Waterloo.

10 Q. Were you ever in Mr. McKee's home in Port Austin, Michigan? A. No, I never have.

Q. From the time you first met Mr. McKee about five years ago until the time he took up residence in Kitchener last December, did you see him at all?

A. I saw him about two or three times in that time. He came over to visit and would call upon us.

Q. You just saw him in a casual way during that period? A. Yes.

20 Q. Do you remember when he came to Kitchener in December, 1946? A. Well, I remember when he came but I didn't see him for about two months after he was here.

Q. Since the time you first saw him have you seen him frequently?

A. Yes, I seen him quite frequently.

Q. Have you seen Terry frequently?

A. Yes, I seen him more than I seen his dad.

30 Q. How do you account for that? A. Well, he came up to our place quite often to play with my young nephews.

Q. Are they your brother's children?

A. No, my wife's sister's children.

Q. Where do they live? A. Up above our place, it is a duplex.

Q. How many? A. Two boys.

Q. What are their ages? A. Five and three.

Q. I understood you to say Terry came up to play with them? A. Yes, quite frequently.

40 Q. And you saw Terry on those occasions, did you?

A. That is right.

Q. And what did you observe as to Terry's health on these occasions, Mr. Bowman?

A. Well, he seemed very active as far as I know and he was really up and coming.

Q. He was up and coming? A. Yes.

Q. Did you notice anything about his nervousness?

A. No, I wouldn't say I did.

Q. You wouldn't say you did? A. No.

Q. How did he get along with your nephews?

A. He used to get Mrs. Ament to phone us.

Q. How did he get along when they were playing?

A. He didn't want to go home. We had to take him home to go to bed.

10 Q. How did he get along with your nephews, was there any trouble? A. No, there never was any trouble.

Q. What would you say yourself on those occasions as to Terry being clean or not?

A. Well, he always came clean and well dressed when he was at our place.

Q. You told us that occurred quite frequently?

A. Yes.

Q. Was Mr. McKee ever at your place while Terry was there? A. Yes.

20 Q. Frequently or seldom? A. Well, he came I would say almost -- he didn't come every time.

Q. He would come to get him? A. Yes.

Q. Do not tell us anything that was said, but I would like you to tell me what you observed as to the relations between Terry and his father, not anything he said but what you observed as to how they got along?

30 A. They seemed to get along swell together. He was always with his dad and seemed to have a lot of fun any time they were together, they were always agreeable and he did anything his dad wanted him to do and anything like that.

Q. Have you ever been in Mrs. Ament's home at 40 Hinds Avenue, Kitchener, while Terry and his dad were there? A. On several occasions I have, yes.

Q. You know Mrs. Ament quite well? A. Yes.

Q. She is also a cousin of your wife's?

A. She is an aunt of my wife.

Q. And what did you observe as to the care and attention which Mrs. Ament gave to Terry in her home?

40 A. She always got everything in order and he was always well looked after whenever I seen him.

Q. What would you say as to whether or not Terry was kept clean by Mrs. Ament?

A. I don't think she is the kind of lady that would put up for any dirt. She is cranky clean, I can tell you that.

Q. She is a good housekeeper? A. That is right, she will look you over before you come in.

Q. You have to wipe your shoes?

A. That is right, I have sat with papers under my feet when I go there.

Q. Have you been at Mr. McKee's farm near Lynwood since he has been living there?

A. Yes.

10 Q. I believe he moved out to his farm about the beginning of May of this year?

A. It is somewhere in there, I don't know the exact date, but it is in that neighbourhood.

Q. Now, you have been there several times since then?

A. Yes.

Q. You were on terms of considerable friendship with Mr. McKee and his family?

A. Yes.

Q. What did you observe as to the care and attention Terry is getting on the farm?

20 A. Well, from what I could see he is apparently doing all right. He is apparently being looked after and he doesn't get or lack anything any other normal child of his age gets.

Q. As a matter of fact, do you know who is there looking after him?

A. Yes.

Q. Who is that? A. Mr. McKee's daughter and a lady, Mrs. Stever.

Q. What daughter? A. Joanne.

Q. And you say a lady by the name of Stever?

30 A. Yes.

Q. I believe Mrs. Stever and her husband live on this farm?

A. That is right.

Q. Now then, were you ever in the Ament house in the evening, that is around the children's bed time?

A. We have been there several times in the evening, yes.

Q. What do you say as to when Terry went to bed?

A. He went to bed around nine, sometimes 8.30, sometimes when we got there he was in bed.

40 Q. Can you tell us from your own knowledge anything as to his hours of going to bed on the farm?

A. He goes to bed around nine o'clock, it depends on the weather, but in normal conditions if we were there at nine o'clock that is the time he would go to bed.

Q. Then, I believe that you and your wife took a

trip with Mr. McKee this summer?

A. That is right.

Q. When was that, just tell me approximately?

A. It must be about four weeks ago, I didn't think I would have to answer that sort of stuff.

Q. Towards the end of August? A. Something like that.

Q. How long were you away? A. About two
10 weeks.

Q. Where did you go? A. We went down through Quebec to New Brunswick and Nova Scotia and Cape Breton and came home a different way. We were gone about two weeks.

Q. How was that trip made? A. By motor car.

Q. And who all were along?

A. There was Mr. McKee's two grandchildren.

Q. Are they Joanne's children? A. No, I don't
20 know what their names are now, all I know is the boy's name was Joe and Andre Stelle.

Q. How old are they? A. The boy is about
15 and the girl 11.

Q. And who else? A. My wife was along and
Mr. McKee and Terry.

Q. I believe you did the driving? A. Yes.

Q. How did Terry get along on that trip?

A. We had a swell time.

Q. What did you observe as to the care and atten-
30 tion which Mr. McKee gave to Terry on that trip?

A. Well, he looked after him and seen he had every-
thing he wanted and he did a lot of swimming. Any
places of interest the little child wanted to stop or
see, his dad did for him and anything his dad wanted,
Terry did. He was only glad to do it for him.

Q. You had a good sight-seeing trip?

A. Yes.

Q. How about your wife, did she do anything about
Terry on this trip?

A. Well, she looked after Terry for a couple of
40 days when Mr. McKee had to go to New York, he was away
a day and a half and my wife took care of him then.

Q. How did your wife look after him?

A. The same as if she was his mother. She looked
after him and saw he was dressed and cleaned up and
looked after.

Q. Tell me what time did Terry go to bed while he
was on this trip? A. Well, there was odd times,

we never went to bed the same every night, but as soon as it got dusk we pulled up and went to bed.

Q. What time would that be? A. Maybe nine or 9.30, somewhere in there, as soon as it was dusk we would go to bed.

Q. I take it you drove during daylight?

A. That is right.

10 Q. While you were on this trip how about your meals, did you have them regularly or irregularly?

A. We had them at meal-time.

Q. Three meals a day? A. Sometimes more than that. We used to have lunch at night sometimes.

---CROSS-EXAMINATION BY MR. BROCK:

20 Q. What did you say your occupation was?

A. I work on a heating service.

Q. When do you work on it? A. When I am awake.

Q. That is a good thing. Now, on this trip where did you all stay when you stopped at the roadside? Did you stay in a hotel or what?

A. We stayed at some cabins.

Q. You stayed at cabins? A. Some cabins.

30 Q. Where else did you stay? A. Well, we stayed in some homes when we got into Nova Scotia. They haven't facilities like we have up here.

Q. You mentioned about swimming, does Mr. McKee swim? A. No, I never saw Mr. McKee in the water.

Q. If I remember correctly, you stated Mr. McKee took him in swimming.

A. Took him to swim.

Q. Oh, you changed it.

MR. LOCHEAD: He hasn't changed it.

40 MR. BROCK: And now, have you any children of your own? A. No.

Q. You haven't any children? A. No.

Q. You and your wife live where?

A. In Waterloo.

Q. Are there any children living in that house?

A. Yes, my wife's sister's children.

Q. And what is your wife's sister's name?

A. Mrs. Clarence Ludwig.

- Q. Does her husband live there too? A. Sure.
- Q. Two families live together? A. Yes,
that is right.
- Q. Now, just when did Mr. McKee bring Terry to
your place of residence?
- A. I believe he came around Christmas time to
Kitchener -- it was around February.
- 10 Q. It was around February when Mr. McKee brought
Terry to play with your children, is that what you say?
- A. As far as I recollect it.
- Q. What is this? A. Around February.
- Q. When Mr. McKee brought Terry to your place to
play with the children? A. Yes.
- Q. Was he going to school at the time?
- A. No, he wasn't going to school that I knew of.
- Q. Were your nephews and nieces going to school?
- A. The oldest one was going to school.
- 20 Q. Now, how many times did this occur or did it
just occur once? A. He was there often, I
never counted the times.
- Q. Were you home? A. Sure I was home at times,
yes.
- Q. You were home at times during the day?
- A. Yes.
- Q. Whom do you work for? A. I work for myself.
- Q. What is the age of your two nephews?
- A. One is five and the other is pretty near two,
one will be six now, at that time he was around five
30 years old and he went half days to school.
- Q. Did he go in the mornings or afternoons?
- A. The mornings.
- Q. Now, was it around this time that you saw Terry
at Mrs. Ament's?
- A. What did you say?
- Q. Was it around this time in February, 1947, was
it 1947 or 1946 you say you saw him?
- A. 1947, it was in the spring.
- 40 Q. Was it around February, 1947, when you saw
Terry at Mrs. Ament's house as well as at your place?
- A. Yes, I seen him there.
- Q. You saw him there at what time?
- A. Do you mean what day?
- Q. No, what time of day? A. This was in
the evening when I saw him down there.
- Q. This was in the evening when you saw him down

there? A. Yes.

Q. What time did you leave Ament's?

A. Oh, maybe 10 or 11 o'clock.

Q. And now you remember, of course, that Terry left Kitchener for the farm?

A. I wouldn't know definitely when he left.

Q. Do you know what farm he first went to?

A. The farm he first went to?

10 Q. Yes, after leaving Kitchener what farm did he first go to? A. I speak English.

Q. Yes, I presume you do. A. Well, from what I gather or heard, I didn't see this, but he was up on the Stever farm.

Q. Did you visit him at the Stever farm?

A. No, sir.

Q. Where did he go after being on the Stever farm-- was that Moses Stever's farm?

A. Yes.

20 Q. Where did he go after being there?

A. Now that I don't know.

Q. You don't know?

A. No.

HIS LORDSHIP: Where did you see him after he went to the country?

A. I seen him up on Moses Stever's farm one day when I was going by there.

MR. LOCHEAD: I thought you didn't see him there.

A. I never met him there, I was driving by and saw him.

30 MR. BROCK: But you told us you didn't know he was on the Moses Stever farm, you said you heard it.

A. What do you mean?

Q. You told us you didn't know he was on the Moses Stever farm? A. Somebody said that Terry was staying there and one day I drove by and I happened to see him playing on the road.

Q. You say you didn't know he was there?

40 HIS LORDSHIP: No, he didn't say that. He said he didn't visit the Stever farm. He said he saw him playing in the lane.

MR. BROCK: But, my lord, he did say, if I remember correctly, he didn't know but he had heard that Terry was at the Stever farm.

HIS LORDSHIP: Later on he amended that, he said he saw him playing but he said he didn't visit him there.

MR. LOCHEAD: You asked him did he know what farm he went to first and the witness quite frankly admitted he

didn't.

MR. BROCK: He first went to the Moses Stever farm and now you say you saw him in the laneway there?

A. That is right.

Q. Do you know who lives at Moses Stever's place?

A. I presume Moses Stever's family, I don't know.

Q. Do you know how many are in the family?

A. No, I can't tell you that.

10 Q. You cannot tell us that? A. No.

Q. Do you know Moses Stever himself?

A. I know Moses Stever himself.

Q. Do you know anyone else in his family?

A. Well, I know his wife.

Q. Anyone else? A. One or two of the boys, I don't know which ones they are. I don't know none of them by name.

Q. Now, in any event you didn't visit him while he was at Moses Stever's farm?

20 A. No, sir.

Q. But you did visit him on the farm on which he now is, is that true? A. That is right.

Q. And Joanne has three children there?

A. That is right.

Q. All young children? A. That is right.

HIS LORDSHIP: Three children where?

MR. BROCK: At this farm.

HIS LORDSHIP: What farm are you speaking of?

MR. BROCK: The farm where he is now.

30 How old are these children? A. I couldn't tell you that.

Q. They are young children? A. Yes.

Q. And do you know whether or not Joanne may be expecting another child?

A. Listen, mister --

Q. I am asking you from your observation, you know.

HIS LORDSHIP: This witness obviously can't tell you that.

40 MR. LOCHEAD: It must either be hearsay or speculation.

---Witness withdrew.

MR. LOCHEAD: Now then, my lord, if I may resume reading of the depositions, I wish to read first from the evidence of Bernard J. Cunningham in volume 3 of the commission. The first few pages of his evidence,

my lord, are as to his qualifications. If my friend wishes me to read it entirely I will do so and it starts at page 317.

HIS LORDSHIP: He is a private detective?

MR. LOCHEAD: Yes, my lord, with certain other qualifications to which I would like to refer; lines 16 and 17. Then line 22. On page 318 I wish to read the first five lines.

10 Then, I wish to read, my lord, commencing at page 319 at line 8, and with your lordship's approval I propose to read through to page 377, line 11.

----(Above commission read to the Court by Mr. Lohead)

---The Court then adjourned until 10.30 o'clock a.m. on September 30th, 1947.

20 ---The Court resumed at 10.30 o'clock a.m. on September 30th.

MR. BROCK: My lord, I desire to be heard further with respect to the admissibility of the evidence behind the foreign judgment of 1942.

HIS LORDSHIP: I thought I heard you on that. I made my ruling.

MR. BROCK: If your lordship will bear with me a little I have examined Dyce's conflict of laws during last evening.

30 HIS LORDSHIP: Well, I will hear anything you have to say if you wish to say it.

MR. BROCK: Confusion has arisen as to the validity of a foreign judgment and its enforceability here. With regard to that I wish to read the comment on page 465 of the 5th edition of Dyce's conflict of laws.

40 HIS LORDSHIP: Mr. Brock, the point you have to meet is this, if I am not bound by any foreign judgment in respect to custody under the circumstances then if I have to make up my own mind am I not permitted to have the widest enquiry into the character of those seeking custody?

MR. BROCK: I submit once a foreign judgment is held to be valid and this judgment of 1942 is admitted to be valid --

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HIS LORDSHIP: I do not think you get the distinction. The point is under the authorities I am only bound to give great weight to it in concluding who is entitled to custody.

I can shorten this, I think, admissions are made that the 1942 judgment is a valid judgment for the purposes of this action. That is what I understand you both agreed. It is either valid for everything it says or
10 it is not.

MR. BROCK: Then, my lord, with regard to it being conclusive --

HIS LORDSHIP: It is not conclusive in respect of custody under the authorities here.

MR. BROCK: My lord, I submit it is.

HIS LORDSHIP: Well, I do not agree with that.

Q. Will your lordship bear with me a little further until I read from Dyce on Conflict of Laws at page 462.

HIS LORDSHIP: Now, is there anything else you would
20 like to say?

MR. BROCK: No, my lord.

HIS LORDSHIP: Well, I propose to admit the evidence subject to your objection, Mr. Brock.

STUART WALTER LUCKHARDT, sworn,

---EXAMINED BY MR. LOCHEAD:

30

Q. Mr. Luckhardt, where do you live?

A. I live at R. R. No. 1, Lynwood.

Q. And what is your occupation? A. I am a
teacher up there.

Q. At what school? A. S.S. No. 3, Wellesley.

Q. Is that the school attended by Terry McKee?

A. It is.

Q. What education have you had? A. I have my
senior matriculation plus one year normal school and I
40 hold an interim first-class teaching certificate.

Q. Are you engaged in any further education at the present time? A. Yes, I am taking an extra-mural course through Queen's University at Kingston.

Q. Would you just explain what that extra-mural course involves?

A. It involves a great deal of work taking it the

way I am and much work must be done in the evenings after school.

Q. What are you doing at Queen's?

A. I am working towards my B.A., an honour B.A.

Q. In what? A. I have not decided what major subjects they are going to be.

Q. Have you attended any sessions at Queen's?

A. I was at summer school.

10 Q. In the course of normal events when will you obtain your degree?

A. In about five years, four and a half years.

Q. Now, how many students are there at this school of yours? A. Twenty-seven.

Q. What grades do you teach? A. I have from one to eight.

Q. The eighth grade being, I believe, what used to be called entrance?

20 A. That is correct. I have one to eight excluding grade four.

Q. Why do you say excluding grade four?

A. There just didn't happen to be any grade four.

Q. You teach all grades up to entrance?

A. All grades, and I can teach nine and ten but I do not have any.

Q. How many pupils have you at that school this year? A. Twenty-seven.

Q. By the way, what is the variation in age of those twenty-seven students?

30 A. From five and a half to fourteen or fifteen, I am not exactly sure, fourteen I think.

Q. And I suppose like most schools, rural schools, they are all children from that district?

A. Yes.

Q. When did Terry commence going to your school?

A. After Easter vacation last spring.

Q. What grade was he in with you during the last two or three months of last year?

A. Grade 2.

40 Q. How did he get along at that time?

A. At first he found the word rather difficult stepping into a new school, and in about two weeks he was going well.

Q. Did he have promotion exams?

A. Yes, he did, promotion exams at the end of the year.

Q. How did Terry get along? A. He was successful and is now in grade 3.

Q. By the way, when I said last year, I spoke of the school year rather than the calendar year. I take it you understand that? A. Yes.

Q. How does he rank in grade 3, how many pupils have you in grade 3? A. Five. I would say he is about second. We are not supposed to rank that at all, it is supposed to be competition with the pupil himself.

Q. You mean the educational system? A. Yes.

Q. Were there any subjects at all with which he was having any great difficulty at the end of last year?

A. He wasn't having any great difficulty with any one itself. His reading was the poorest.

Q. What, if anything, did he do about that?

A. He took the reader home in the summer and must have done some work because when he came back he had improved this fall.

Q. Did he do that voluntarily or on instructions from you? A. No, no instructions whatsoever from me.

Q. He did it on his own as far as you know?

A. Yes.

Q. How has he been getting along in grade three this year, how has he been getting along generally in regard to grade 3?

A. Very well, he works along with the other children and definitely has a school spirit and he can work on by himself.

Q. How is his school work this year?

A. It is very good.

Q. I suppose like other schools you started the day after Labour Day, so you now have had about four weeks? A. Yes.

Q. By the way, are you appearing here under subpoena?

A. Yes.

Q. From your experience in rural schools would you say, what would you say would be the effect of moving Terry from your school to an American school at this time?

MR. BROCK: I object to that, that is opinion.

HIS LORDSHIP: I think this man might be qualified to give it, he is the teacher and has taught this boy for several months.

THE WITNESS: I think that he would definitely lose one year to be transferred to the United States or out of an Ontario public school. The system here is different, each system is different in each province, and he would lose one year, I am quite certain, if he were moved.

Q. When you say you are quite certain he would lose a year are you speaking of a transfer at this time?

10 A. Yes.

Q. Is your school year divided into terms or one unit?
A. In words it is in terms but it is in one unit for attendance records and so forth.

Q. Well, I suppose by the calendar it is divided into terms by the Christmas vacation?

A. Yes, and the Easter vacation.

Q. Now, what would you say would be the effect of Terry's transfer to an American school, say at Christmas vacation or Easter vacation?

20 A. Well, it would be practically the same; there is very little difference, you teach so much at one time and try to finish it up and another teacher is not always following the same line, and if he was transferred at any time like that it would be practically the same.

Q. If he was going to be transferred to another school what would be the proper time to change?

A. At the end of the year.

Q. Do you then think he would suffer a great deal?

A. Depending on the school he went to.

30 Q. I appreciate that because there is a great variety of schools.
A. Any schools along our system -- it would be a change, of course, but it would not have the same effect.

Q. Well, when you say "our system" what system do you mean?

A. The Ontario system.

Q. Is there considerable variation between school systems in Ontario and that prevailing in other provinces in Canada?

40 A. I am not prepared to speak of other provinces but there must be a certain amount of difference.

Q. Now then, tell me about Terry's relations with other students in your school. How does he get along with them?

A. Everyone there is one of the gang and Terry is included in that.

Q. Terry is just one of the gang?

A. Definitely.

Q. Is he marked out or set apart in any way?

A. Not at all.

Q. What can you tell us about the regularity or irregularity of his attendance at school since last Easter?

A. He has had perfect attendance.

10 Q. What have you been able to observe, if anything, as to his health during the period he is going to your school?

A. As a teacher I am bound to look after the health of every one of the children there, and I have not noticed anything wrong with Terry in any way at any time.

Q. Would you have noticed if anything was present with regard to him being a nervous child?

A. I do not think he is a nervous child, I have not noticed anything to that effect anyway.

20 Q. Do you know where Terry is living?

A. Yes, I do.

Q. It is at his father's home? A. Yes.

Q. Do you know how far it is from there to the school? A. It would be very close to two miles.

Q. Do you know how Terry goes back and forth?

A. He has a buggy which he drives back and forth, he has a black pony and a little buggy.

Q. As a matter of fact I believe you live at Mr. McKee's farm as well? A. Yes.

30 Q. Why are you living there rather than anywhere else? A. Because he has the closest farm in that district where there is electric lights and I can study at night. I worked last spring with lamps but it was very hard to do.

Q. Are you a free lodger or do you pay board?

A. I pay board.

Q. How long have you been living there?

A. Since the second week in August of this year.

40 Q. There has been some discussion in evidence about the condition of the roads in this district, particularly with regard to winter conditions. What can you tell us about that with particular reference to Terry's ability to get to and from school?

A. Terry will be able to get to and from school every day this winter.

Q. There was some talk about road conditions last winter. You were in that district last winter?

A. Yes.

Q. Was last winter a severe winter?

A. One of the severest in history for the past 25 years anyway.

Q. Was there any day last winter during these severe conditions when Terry would not be able to get to school?

A. No, sir.

HIS LORDSHIP: Q. Were there any days in which you
10 did not get to school last year?

A. There was one day.

Q. I mean on account of weather? A. No, sir.

Q. When you say Terry will be able to get there every day this year, why are you confident of that?

A. I never saw anything to stop me getting to school yet and Terry travels with me.

Q. I see, you take him? A. I do.

20

---CROSS-EXAMINATION BY MR. BROCK:

Q. You say you have senior matriculation and one year normal? A. Yes.

Q. Have you started this course at Queen's?

A. I started it this summer.

Q. When did you start? A. I registered
about the first week in May.

Q. When did you start, in August?

30 A. I took the school course.

Q. What have you done in it so far?

A. I have obtained the English.

Q. When you obtain your degree, which you hope to, I presume, will you teach at this school?

A. It is hard to say.

Q. You know when you obtain your B.A. you usually go to a collegiate, do you not?

A. No, sir, many teachers teach in public schools in Ontario with B.A.'s.

40 Q. In country schools -- can you refer us to any cases? A. No.

Q. Why do you say in some cases they teach public schools with B.A. degrees?

A. Because in a few years a B.A. is going to be a requirement for every public school teacher.

Q. Who told you that? A. I have not been told but it is in all our technical literature.

Q. Have you any of that literature here?

A. No, I have not.

HIS LORDSHIP: I don't think it matters very much.

MR. BROCK: Q. Now, you say that you have eight grades at your school and there are pupils in seven grades?

A. Correct.

10 Q. Isn't it a fact that a teacher teaching one grade has a better chance with the pupils than a teacher teaching 27 pupils of various grades such as you have in your seven grades?

A. It depends entirely on the number of pupils in one grade.

Q. Isn't it a fact it is much easier to prepare and teach one grade than it is to try and teach seven grades all in the one day in the same schoolroom?

20 A. In the country we say it is hard to teach but the city teacher with one grade say, you do that but we have just as much work because we have to prepare more intensively.

Q. You say in the country it is more difficult to teach seven grades than to teach one. That is natural, isn't it?

A. Depending on the number of pupils in that one grade.

Q. That is why we have experts to-day, because they become experts in one grade and they are able to teach it better than one trying to teach seven grades.

30 A. I do not think you will have experts in one grade, you will have it in subjects.

Q. Taking that further then, if in the city schools one teacher has one subject to teach, then is not she better qualified to teach that one subject than if she tried to teach a number of subjects to seven grades?

A. If she weren't, I don't think she would have that job.

40 Q. Now then, you speak of moving Terry to a United States school. Do you know anything about the procedure or what is taught or what is done in United States schools, say in California?

A. Nothing except what I have read in books.

Q. Do you know anything about the teaching methods and facilities in schools in California?

A. No, not in California.

Q. Now, you have said it would affect Terry's education here in grade 3 if he moved from your school.

Would the same thing be construed if Terry was moved from a school in Port Austin to Kitchener and not sent to school?

HIS LORDSHIP: I do not understand that question.

MR. BROCK: My lord, I will re-phrase it. Do you know Terry was taken from a school in Port Austin in December of 1946? A. Yes.

10 Q. And did you know that he was going to school in Port Austin at that time? A. Yes.

Q. Then the effect which you say would happen, that is moving from Port Austin to Kitchener in December of 1946, would that affect his schooling?

A. I believe he was in a much lower grade and it would not affect him nearly so much.

Q. You think the third grade is a high grade?

HIS LORDSHIP: It is higher than grade one.

MR. BROCK: But when he came to your school you had him in grade two? A. Yes.

20 Q. He is now in grade three? A. Yes.

Q. I suggest to your lordship that is one grade higher. My lord, the witness has said he started Terry in the second grade.

HIS LORDSHIP: That is right and now he is in the third grade.

MR. BROCK: Q. When he moved from Port Austin in December of 1946 I submit it would have some effect.

30 HIS LORDSHIP: Well, I don't know, if the child was in kindergarten it would not have much effect but if he was beginning to read it might have because of the different methods.

MR. BROCK: Q. Was Terry at school on Friday after-
two weeks ago?

A. That is the only time he was not.

Q. Now, he did not have a perfect record, did he?

A. He was excused that afternoon.

Q. It isn't a perfect record of attendance.

40 HIS LORDSHIP: Do not be puerile about this sort of thing. We are going to be here a month if we go on this way. Let us get to something that helps me.

MR. BROCK: My lord, I would like to go further.

HIS LORDSHIP: Go further and find out but do not be so absurd about everything. Let us get down to something that gives me some assistance, please.

MR. BROCK: Thank you, my lord.

HIS LORDSHIP: You do not need to thank me at all; get on with the case.

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MR. BROCK: Q. Now, with respect to these roads from the farm at which he is staying or is kept, to the school, is it two miles or a little more from the school to his home?

A. Two miles and almost one-tenth, it is not one-tenth.

Q. This district is in the snow belt, there is a lot of snow falls near Lynwood and around this school during the winter?

A. More snow falls there than where?

Q. I say there is a lot of snow falls there?

HIS LORDSHIP: What he means is, the district around Kitchener, I think in Ontario there is an area called "the snow belt". Kitchener is in that, is it not?

A. I am not prepared to say.

HIS LORDSHIP: I would think it was, I may be wrong.

MR. BROCK: Q. Then, you do not suggest Terry would be able to go to school in this buggy during the winter, do you?

A. No, sir.

---Witness withdrew.

MRS. WILHELMINA AMENT, sworn,

---EXAMINED BY MR. LOCHEAD:

30 Q. Now, Mrs. Ament, will you tell me where you live in Kitchener? What is your street address?

A. 40 Hinds Avenue.

Q. Who lives there with you?

A. My husband and just at present my daughter and the baby are there.

Q. I believe that is your only child?

A. Yes.

Q. How old is her baby? A. She will be eight months old next week.

40 Q. How long have your daughter and her baby been with you? A. About five and a half months.

Q. That would be since about last March or April?

A. Yes, since February to be correct.

Q. Now then, do you know Mr. McKee?

A. Yes, I do.

Q. As a matter of fact, I believe you are a cousin of his first wife? A. Yes.

Q. Do you recall when you first met Mr. McKee?

A. Well, it is some 30 years ago, I would not know just how long.

Q. A good many years ago? A. Yes.

Q. Mrs. Ament, where did you meet him then, was it here or in the United States?

A. It was in Kitchener, I think, he was visiting my aunt.

10 Q. And was he alone on that occasion or was he accompanied the first time you met him?

A. I cannot just remember.

Q. Then after the first occasion on which you met Mr. McKee did you see him thereafter from time to time?

A. Yes, I did.

Q. How frequently? A. Oh, I couldn't just say definitely, you know, after we moved to Kitchener we lived at Listowel for a long time and of course I saw him quite often with my aunt and he came to see us

20 as well.

Q. Would that be on visits he made to this district?

A. Yes.

Q. Generally speaking, would he be alone or accompanied? A. Sometimes his wife would be with him.

Q. Was there ever any of his children with him?

A. I don't know, but it seems to me he had some children with him, but I cannot just recall of paying any attention.

30 Q. What generally, aside from what has happened the last year, what generally were the relations between Mr. McKee and his family and you and your family?

A. Very good.

Q. Now, did you ever see Terry before December of last year? A. Yes, I did.

Q. Whereabouts did you see him?

A. Mr. McKee brought him to our house on visits.

Q. Then I believe for some time Mr. McKee and Terry lived with you? A. Yes.

Q. When did they come to stay at your place?

40 A. It was after Christmas, between Christmas and New Years.

Q. What year? A. 1946.

Q. How long did they stay with you? A. They stayed with me until Terry started to go to school. Mr. McKee stayed on a bit longer.

Q. As a matter of fact, do you remember when that was? A. Perhaps not the exact date; after

Easter some time.

Q. That is this year? A. That is this year, yes.

Q. So Terry was with you until he started to school after Easter and Mr. McKee perhaps a little longer?

A. Yes, that is just in and out.

Q. Do you know where Terry went to live?

A. With my brother.

10 Q. Who is that? A. Moses Stever.

Q. Now then, during the period of time that Mr. McKee and Terry were living at your house how much time per week or per month did Mr. McKee spend there?

A. As near as I can remember at my house it was a week. About five days a week, on the average five days a week.

Q. And what generally did you observe as to the relations between Terry and his father?

A. Very good.

20 Q. And when Mr. McKee was not there, who looked after Terry? A. I did.

Q. In what manner did you look after him?

A. Like my own son.

Q. Now then, just one question as to Terry's behaviour while at your house, did Terry say his prayers or didn't he? A. Yes, he did.

Q. How often? A. Every night.

30 Q. Now, I want to pass to the subject of the various visits that Mrs. McKee has made to your house to see Terry. There are one or two general questions I want to ask you about that. Now, in the first place when Mrs. McKee was there, what generally did you do during the period of her visit?

A. I went about my housework.

Q. And did you personally on any occasion prevent Mrs. McKee from seeing Terry? A. No.

Q. By the way, did you see Mrs. McKee frequently when she came to your place?

40 A. No, I seldom saw her.

Q. How do you explain that? A. I was either busy in the kitchen or upstairs when Terry would let her in and let her out.

Q. Terry would let her in and let her out?

A. Mostly.

Q. Who went to the door with her when she left?

A. Terry.

Q. What, generally, was the attitude towards you which Mrs. McKee displayed during these visits?

A. She was very obnoxious and nerve-wracking.

Q. Now, there are two or three specific occasions I want to refer to and it may be difficult for you to recall the dates. If you do not recall them, say so.

10 Firstly, do you remember an occasion, I believe it was Saturday afternoon, when Mrs. McKee was at the house with some men, about a week after she arrived in Ontario?

A. Yes.

Q. About what time of day was it she came?

A. About eleven o'clock.

Q. Do you recall how many people were in her party?

A. No, I cannot recall just everyone, but I saw two on the verandah.

Q. Who were those two? A. The man that is sitting there beside her.

Q. That is Mr. Pulfer, and who was the other person?

20 A. The other was Mrs. McKee.

Q. Did you at that time know who Mr. Pulfer was?

A. No.

Q. He was a stranger to you? A. Yes.

Q. Now just tell us what happened that day?

A. They rapped and rapped and rapped and knocked to get in. Well, they were not friends of mine and I wasn't asked to open the door, and Mr. McKee was there so we just let them rap.

Q. How long did this rapping keep up?

30 A. About twenty minutes.

Q. What sort of rapping? A. Real hard, at first Mrs. McKee and then Mr. Pulfer and he rapped much stranger.

Q. For about twenty minutes? A. Yes.

Q. Did you happen to notice whether or not there were any pictures taken that day?

A. No, I wasn't feeling well.

HIS LORDSHIP: Q. Why didn't you let her in to see the child?

40 A. Mr. McKee was there.

Q. He didn't want to let her in?

A. I was trying to keep out of it myself.

Q. Oh, yes, I can understand.

MR. BROCK: Q. Had you been speaking to him that day; do not tell us what was said but had you been speaking to him?

A. I do not recall.

Q. Now then, do you know whether or not Terry knew that it was his mother that was outside that day?

A. He was the first one to see her.

Q. Did he recognize her? A. Yes, he did.

Q. Now, did you observe whether or not that incident had any effect on Terry?

A. Yes, it did.

Q. And what was that effect? A. Fear.

10 Q. Beg pardon? A. Fear.

Q. When did that fear display itself?

A. Ever after that. He is not a nervous type but after that he feared to go out to play and if there was a rap came to the door he would hide behind the door or anywhere he could get to.

Q. That happened after this occurrence on Saturday afternoon?

A. Yes.

20 Q. Do you know whether or not these people stayed at the front door or did they go any place else in connection with the house?

A. No, I wouldn't know.

Q. You were upstairs, I believe you told us?

A. No, I laid down on the chesterfield.

Q. But you could hear what was going on?

A. Yes.

30 Q. Now then, I believe Mrs. McKee did make a visit and saw Terry the following afternoon, which would be Sunday; do you recall that occasion the following day, that is the day after she was down there, I believe she was there the next afternoon?

A. Yes.

Q. You remember her being there? A. Yes.

Q. Was Mr. McKee in the house at that time?

A. He was upstairs lying down.

Q. What were you doing while Mrs. McKee was there?

A. I was in the dining-room writing to my daughter.

Q. The dining-room I believe is off the living-room?

A. Yes.

Q. And where were Mrs. McKee and Terry?

40 A. In the living-room.

Q. Were they in there alone? A. Yes.

Q. I was not there on that occasion? A. No.

Q. What type of door is there leading from the living-room to the dining-room?

A. From the dining-room into the living-room there is just a single door.

Q. From the front leading into the hall what sort of door is there?

A. French double doors.

Q. Did you hear any conversation that afternoon between Mrs. McKee and Terry? A. Yes, I did.

Q. Will you tell us, please, just what you heard?

A. Well, she sent Terry out to tell me --

Q. You cannot tell us anything Mrs. McKee said or
10 anything said by anybody else.

A. She sent Terry out to the dining-room to ask me, to speak to me -- and I came in and she said I am going to have my baby to-day and I am going to ask you, will you stop me. I said I would not like to see you walk off with him like this. What I meant was that I should have been notified a day or two before if she was going to take him, to have his clothes ready.

Q. Was this conversation? A. Yes. She
20 said, "He is my baby and I am going to take him." I said, I understand Terry is a permanent Canadian resident. She said, I didn't come here to argue with you, all I want to know is if I attempt to take him will you stop me, and I said, Mrs. McKee, if you attempt to take him I wouldn't attempt to stop you.

Q. What did she say after that?

A. She said I was going to be very, very, very sorry and I said I had nothing to do with this but to look after Terry and Mr. McKee.

Q. Did anything occur after that?

30 A. I changed the subject to the weather and asked her to compare it with California and we got out of the dining-room. Then she was trying to persuade Terry to go upstairs and get his clothes to go home with her that day and Terry wouldn't do it. I heard Mrs. McKee beg him to go and get his clothes; she said, go and get your hat and coat and shoes and I will take you down to Mr. Brock and we will talk it over.

Q. Did she say why? A. She said something to
40 the effect that she had agreed or was agreeable to six months and his daddy could have him the other six months. His dad wouldn't agree to that and she said, go and get your hat and coat and come down to Mr. Brock's and talk it over, and Terry said, why not bring Mr. Brock here, and she said, I can't do that, and Terry did not move, at least he didn't go out to get his clothes.

Q. What happened after that?

A. Shortly after that Mrs. McKee came to the dining-room door and asked me for the privilege of using my phone to phone for a taxi to come and pick us up.

Q. Pick us up? A. Yes, she said, "Will you give me the privilege of using your phone to phone for a cab".

Q. Now, I believe we had just got to the point where you said Mrs. McKee came to the dining-room door and asked for the telephone to get a taxi to pick us up?

A. Yes.

Q. What occurred after that?

A. At that moment Mr. McKee appeared in the dining-room.

Q. Where had he been, do you know?

A. I really don't know but he went upstairs to rest, he always did after lunch.

Q. At that moment he appeared in the dining-room?

A. Yes.

20 Q. What occurred after that?

A. He said, "Oh, no, you don't, oh, no, you don't" and he said to Terry, "Come on, Terry", he motioned to Terry to come out of the room and go upstairs.

Q. What did Terry do? A. Terry didn't do

30 anything at that particular time because there were words between the two. Mrs. McKee said something to Mr. McKee about being an honest churchman, or something to that effect, I cannot recall the exact words, and Mr. McKee said, "Don't you think you have caused about enough trouble" and he said, "I want you to understand that Terry is a permanent Canadian resident and under the protection of the Canadian law".

Q. What occurred after that? A. She said, "Oh, no, he isn't; he is my baby" and with that Mr. McKee told Terry to go out and they went upstairs. She asked Mr. McKee to give her time to say good-bye to Terry.

Q. Was that time given to her?

40 A. Yes, she took about five minutes time.

Q. And Terry went upstairs? A. Terry went upstairs with his father and Mrs. McKee let herself out.

Q. Now then, when Mr. McKee came into the dining-room from wherever he had been, did he lunge at Mrs. McKee?

A. No, he did not.

Q. Did he attempt to strike her?

A. No.

Q. Did he threaten her in any way?

A. Not that I heard.

Q. You were right there? A. Yes.

Q. Did Mr. McKee use any abusive language?

A. I didn't hear anything.

Q. Was anything of that sort done by Mr. McKee that afternoon?

A. No.

Q. You were there up until the time Mrs. McKee left?

A. Yes.

10 Q. She was not back again that day?

A. No.

Q. Now then, do you remember, Mrs. Ament, the day that Mrs. McKee had been there in the afternoon and then came back about five o'clock with another lady.

A. It was about seven o'clock.

Q. And do you happen to recall how Terry was dressed that afternoon when Mrs. McKee was there?

A. Yes, he had on a pair of tweed golf breeches or pants.

20 Q. Did they come down above his knee or below his knee? A. Below the knee with buttons and a pair of golf socks and he had on a shirt and woolen pullover.

Q. A woollen pullover sweater? A. Yes.

Q. Was anything said that afternoon that you heard by Mrs. McKee about the house?

A. I cannot recall just that afternoon but she sent Terry out to me to find out if I had any drops in the house. She said he had a terrible cold.

Q. Had he? A. No.

30 Q. Did you take his temperature?

A. Yes, we did.

Q. What was it? A. Normal.

Q. And you say he didn't have a cold?

A. He didn't have a cold.

Q. I believe you said Mrs. McKee did come back about seven o'clock with another lady?

A. Yes, she did.

Q. Did you at that time know who that lady was?

A. No.

40 Q. Have you subsequently learned? A. Yes.

Q. Who? A. Miss Kirby.

Q. What happened when they came back?

A. When I opened the door, I just opened the inside door, and Mrs. McKee asked to see Terry and I told her Terry was out with his dad.

Q. Was he? A. Yes, they had gone to the country. She said, "Out with a cold like he has" and I said, "I

look after Terry, I take care of Terry". She said, "I called up his solicitor and told him he had a terrible cold and must be looked at." I said, "Mrs. McKee, I am taking care of Terry", and then she said something else that upset me terribly, I cannot recall it, I was so upset, and I said, "Mrs. McKee, will you please go and mind your own business", and I showed her the door.

10 Q. Did you shut it? A. It took me long enough to shut the door. She said, "Can you beat that; out with a cold like he has".

Q. You heard that? A. I heard that as I was shutting the door.

Q. Now then, do you know how long Terry was in the country over the Easter week-end?

A. They left on Thursday night and came back Monday night.

Q. They left the night before Good Friday and came back Easter Monday night? A. Yes.

20 Q. Do you recall when Mrs. McKee did visit with Terry after the Easter week-end, when did she first visit with him? A. On Tuesday.

Q. The day after he was back? A. Yes.

Q. Now then, do you happen to remember as a matter of fact that on the Tuesday, which was April 8, that she was there visiting Terry when there was something said about slamming the door. Do you remember any conversation?

30 A. She said to Terry, "Mamma came back with medicine but that nasty old woman slammed the door in my face, I hope she didn't treat you like that."

Q. She said that to Terry, did she? A. Yes.

Q. By the way, in what tone of voice was that said to Terry? A. Just as I said it.

Q. Was it said in an ordinary conversational tone?

A. No, she asked him how his cold was and he said it was all right and she said, "Mamma came back" -- she said it loud enough for me to hear it.

40 Q. Where were you at that time? A. I was in the dining-room.

Q. Which is a room just off the living-room?

A. Yes.

Q. And they were in the living-room?

A. They were in the living-room.

Q. Now then, do you recall the following Sunday, Mrs. McKee was down again visiting Terry and after she had

been there some time somebody else came to the door.
Do you remember that incident?

A. Yes.

Q. Now, will you just tell us what happened on that
afternoon? A. Well, I heard a rap at the door.

Q. Was this after Mrs. McKee had arrived?

A. Yes.

Q. She had been there for some time?

10 A. She had been there for some time.

Q. For how long? A. She was late that day,

she was forty minutes late. Terry informed me that and
I just couldn't say how long but she had been there for
some time and I had expected my niece and her two little
girls and I heard a rap and I went to the door and Mrs.
McKee rushed out ahead of me and opened the door and
opened it quite wide and said, "Come right in", and I
said, "Oh, no, this is not an open house and you cannot
bring anybody in." She said, "Come right in, Mrs. Brock,
20 and bring the children in, I want them to see Terry".
I said, "Mrs. McKee, this is not an open house, you can-
not bring anybody in."

Q. Where was Terry? A. He was in the living-
room.

Q. Did he hear these remarks?

A. Yes, he cried and went upstairs.

Q. As a matter of fact, did you see the lady who was
at the door? A. Yes.

Q. Do you know her? A. No, I don't.

30 Q. Before this lady arrived at the door did Mrs.
McKee say anything to you about expecting some one?

A. No, she did not.

Q. What happened after that that afternoon?

A. Well, when she said I was nothing but a nasty
old thing, I walked in and picked up her hat and purse
for her and she refused to take it. I put it on her
shoulder and she raised her hand and said, "Don't you
dare hit me, don't you dare hit me".

Q. Where was Terry when that was going on?

40 A. Terry had gone upstairs.

Q. What happened after that? A. She turned
on Mr. McKee and begged him to hit her.

Q. Where had Mr. McKee been during the conversation
at the door? A. He came in some time about
the time, as near as I recall, when she said, "This was
nothing but a damn old prison".

Q. Mr. McKee appeared about that time?

A. Yes.

Q. Do you know where he had been? A. He was down the cellar.

Q. Was that near the door that goes out of the house? A. That goes out the side door.

Q. What happened after Mr. McKee appeared?

A. Well, as I said, I picked up her coat and handed it to her and then she turned to Mr. McKee and begged 10 him to hit me. She said, "I beg you to hit me, I dare you to hit me", and that kept up a long time, and Mr. McKee said, "I think you had better leave the house or if you don't I will send for the police for disturbing the peace on the Sabbath day".

Q. When Mr. McKee appeared on that occasion in what manner did he appear; did he lunge at Mrs. McKee?

A. No, he did not.

Q. Did he strike her? A. No.

HIS LORDSHIP: I think the other term used was that 20 he pointed at her.

MR. LOCHEAD: Q. Did he point at her?

Q. Did he attempt to strike her? A. No, he didn't. I watched him exceptionally carefully.

Q. You watched him all this time? A. Yes.

Q. Did he threaten to strike her? A. No.

Q. Did he use any abusive language?

A. No, he did not.

Q. After he made this remark, "I think you had better leave" and about disturbance on Sunday, what happened? 30

A. Then she left the house.

Q. She did leave, did she? A. Yes.

Q. By the way, why was it that you said you watched Mr. McKee particularly? Why did you happen to be watch- him?

A. Because she said he had threatened to strike her the other Sunday.

Q. When and where was that? A. When she came to get Terry she said that, and she restrained him on account of the baby.

40 Q. I just want to get that straight.

A. That is why I watched him.

Q. You were watching Mr. McKee particularly because of something Mrs. McKee had said, something she had said that had happened the other Sunday?

A. Yes.

Q. Where and when did she say that?

A. The time she came for Terry, the Sunday she came

for him.

Q. The other Sunday you told us about?

A. Yes, I noticed in the paper, we didn't know anything about it until we saw it in the paper, that Mr. McKee threatened to strike her, but she restrained him on account of the baby, that is why I watched him close the next time.

Q. Now then, one or two general questions, Mrs. Ament; it has been stated and has not been contradicted, that Terry was not going to school between the time he came to Ontario and Easter time. That is correct, he was not attending a regular school in Kitchener?

A. No.

Q. Did he receive any instruction?

A. Yes, there was a private teacher coming to the house.

Q. How often did she come? A. Five days a week.

20 Q. How long did these lessons last?

A. Usually two hours, a little longer.

Q. Who was that private instructor?

A. Miss Rennie.

Q. And do you know what Miss Rennie's regular occupation had been? A. She taught school up until lately and she does private tuition.

Q. Now then, Mrs. Ament, will you tell me what you have to say about whether or not Terry was kept clean and tidy while at your place?

30 A. He was kept perfectly clean.

Q. By whom? A. By me.

Q. How about the clothes he wore?

A. He wore good clothes.

Q. Were they in shabby condition or good condition?

A. No, they were not in shabby condition.

Q. As a matter of fact, were you served with a subpoena to appear here to-day? A. No.

Q. Why are you here? A. Because of indignation as to what was said about me last week.

40 Q. And there was some evidence last week as to Terry's condition when he went down to the Hiller place. One thing in particular was said as to his clothes and dirt on his feet.

A. That is false; I bathed Terry before I sent him down and dressed him and he was well dressed.

Q. Before he went down every time? A. Yes.

Q. Now then, what about Terry's recreation while he was at your place, what sort of play did he have?

A. He had lots of toys and he played in the house and when he felt like going out he would go out. We took him down town sometimes. I took him down and my husband did and Mr. McKee took him down to the park. He would go out to play any time on his own up until the time that Mrs. McKee came up that Sunday to take him.

10 Q. What effect did that have on him?

A. Well, he appeared, if I remember correctly, I got him to go out once after that and he asked me to watch him. I asked him what I would watch him for and I said, "Yes, I will," I said, "I would go to the front door and watch him" and if he would see a car coming he would run and hide behind the verandah rail. I said to him, "What did you do that for?" and he said, "I didn't know who it might be".

20 Q. Now then, did Terry go to church and Sunday School while he was at your place?

A. Yes, he did.

Q. How often? A. Practically every Sunday.

Q. What do you say generally as to his health while he was at your place?

A. He is a strong, healthy boy, his health was excellent.

Q. Do you see him frequently now since he has left your place? A. Yes.

30 Q. What about his health now? A. I would say it is good.

Q. There has been some evidence as to his being a nervous child; what do you say about that?

A. Terry is too active, he is a strong, healthy, active boy and not a bit nervous. He may have a little fear.

Q. Fear of what? A. Of being taken.

Q. The sort of thing you were telling us about a few minutes ago? A. Yes, he has.

Q. Was he ever sick while he was at your place?

40 A. No.

---CROSS-EXAMINED BY MR. BROCK:

Q. Now, Mrs. Ament, do you know that Mr. McKee has eleven children by your cousin, his first wife?

A. Yes, I do.

Q. Did any of those eleven children ever come to stay with you for any period of time?

A. Yes, Rose Marie visited us.

Q. When was that? A. When my daughter was 15 or 16, thereabouts.

Q. How old is your daughter now?

A. She is 35.

10 Q. That is 20 years ago? A. Yes.

Q. Twenty years ago Rose Marie came to see you for about how long? A. A few weeks two summers in succession.

Q. Did any other children come to see you at any time? A. They have been in and out for days at a time.

Q. When was that? A. The last few years back.

20 Q. Since Mr. McKee has come over in December, 1946, is that what you refer to?

A. No.

Q. Will you tell us which one came and how long they stayed? A. Muir has been there and Mark and his wife.

Q. How long have you been on Hinds Avenue?

A. We built the house in 1919 and we are living in the same place and we lived for two years across the street before that.

30 Q. Before 1946, in December of that year, how many times did Mr. McKee come to your place at 40 Hinds Avenue?

A. Oh, he had been there a number of times.

Q. How many?

A. I couldn't write it down.

Q. Do you recall when he was there?

A. He has been back and forth the last three years probably a little more than he has been any other time.

Q. Did you know that while your cousin was married to Mr. McKee that he was named as a co-respondent in a divorce action?

40 A. I did not.

Q. You didn't know that? A. No.

Q. Have you learned it at any time since?

A. No, I have never heard it.

Q. You have never heard it? A. I have never heard it.

Q. Now, you have said that Mr. McKee spent five days a week at your house but he goes to New York every week,

does he not?

A. He usually leaves on Monday and comes back on Wednesday noon, or he leaves on Sunday afternoon and comes back on Tuesday.

Q. Now, he has an office in Detroit as well, had he not? A. Yes.

Q. And he visits that once a week, too, doesn't he?

A. Not that I know of.

10 Q. Do you know?

MR. LOCHEAD: She said that she didn't know.

MR. BROCK: Not that you know of. Now, you told us that you always went about your housework while Mrs. McKee was there? A. Yes.

Q. How did it happen you were always in the dining-room or hall overhearing these conversations?

A. That is not true.

Q. You have told us you were in the dining-room?

20 A. At times, and at times I was in the kitchen and at times I was upstairs.

Q. Isn't it true you always happened to be there when any conversations happened?

A. I can truthfully tell you I didn't try to be. I didn't want to hear anything Mrs. McKee said about me. She said it plenty loud and I could hear it anywhere.

Q. Have you been listening at times?

A. No, I did not, I told Mr. McKee I wanted to stay right out of the picture.

30 Q. What is your age? A. 69.

Q. Who lives with you? A. My daughter at the present but she is going home soon.

Q. And your husband? A. My husband.

Q. Anyone else? A. No.

Q. Have you a roomer? A. Not now.

Q. Did you have a roomer when Terry was there?

A. Yes, part of the time.

Q. Who was that? A. Mr. Johnston.

Q. How big a house have you? A. Eight rooms.

40 Q. Eight-room house, and you had a roomer and your husband and your daughter and her baby?

A. Yes.

Q. When was that baby born? A. The 3rd of February.

Q. While Terry was at your place?

A. Yes, she was at the hospital.

Q. Did she come back to your house after being at the hospital, your daughter?

A. Yes, when the baby was nine days old.

Q. How long did your daughter stay with you?

A. She stayed a month at that time and went home.

Q. With the baby? A. Yes.

Q. That is while Terry was there? A. Yes.

Q. I presume during that time you were engaged with your daughter and your grandchild, is that right?

A. Well --

10 Q. She was your daughter and it was your grandchild?

A. Yes.

Q. And you spent your time with your daughter and grandchild? A. Not all of it.

Q. You had an eight-room house to keep and a roomer. Did the roomer obtain his meals at your place?

A. He did not.

Q. He didn't get his meals? A. He got his breakfast, he was there one week and away a week.

20 Q. Now, Terry came to your place in December between Christmas and New Years of 1946?

A. Yes.

Q. And then you say Miss Rennie came?

A. Yes.

Q. How old is Miss Rennie?

A. I don't know.

Q. How long is it since she has been teaching?

A. I don't know.

Q. Is she a young woman or an elderly woman?

A. An elderly woman, a retired teacher.

30 Q. How long is it since Miss Rennie has been teaching school? A. I wouldn't know.

Q. Was it in March that Miss Rennie came to tutor Terry, the month of March, 1946?

A. In the month of March, I really couldn't say.

Q. It was after Mrs. McKee had come to Kitchener, wasn't it? A. I think she came before, I can't recall it.

Q. But in any event can you recall whether it was after Mrs. McKee came to Kitchener?

40 HIS LORDSHIP: She said she thought that she came before but she couldn't recall.

MR. BROCK: Q. In any event, there was quite a period of time in which Terry did not go to school and had no tutor, is that correct?

A. Well, there was a time, I couldn't tell you.

Q. Now then, Mrs. Ament, you told us I believe in examination-in-chief you seldom saw Mrs. McKee when she

came to your house to see Terry?

A. That is correct.

Q. I suppose Terry answered the door for Mrs. McKee?

A. He did.

Q. Well then, why did you tell us, Mrs. Ament, that Terry would run and hide if a rap was heard at the door?

A. I didn't say that, not every time Mrs. McKee came; he knew she was coming.

10 Q. You told us Terry would run and hide if he heard a rap at the door?

A. Yes, after the fuss at the house he did.

Q. And when Terry answered the door I suppose he let Mrs. McKee in the house?

A. That is right.

Q. Now, on this occasion when Mrs. McKee asked to take Terry away, did you say you would allow Mrs. McKee to take Terry away with her?

20 A. Did I allow her -- I told Mrs. McKee I wouldn't like to see him go.

Q. I just want you to answer my question. Did you allow her?

A. Yes, I did, I said, "If you are going to take Terry I won't attempt to stop you."

Q. You say that?

A. Yes.

HIS LORDSHIP: That is what she said in chief.

MR. BROCK: You still say that?

A. Yes, I still say that.

Q. But Mr. McKee came down, did he?

30 A. Yes, he did.

Q. Did he allow her to take him?

A. Well, he --

Q. I just asked you did he allow her to take him?

A. No, he did not.

Q. When did Mr. McKee come into the room?

A. When she asked to phone for a taxi to pick them up.

40 Q. I see, and now then when Mrs. McKee came back on this occasion when she brought the medicine for the cold you have told us that you told Mrs. McKee to mind her own business. Is that correct?

A. After she --

Q. You knew at that time Mrs. McKee was the mother of the child? A. I did.

Q. And you knew she had an order for custody?

A. Mrs. McKee was allowed to come to our house once a day.

Q. I asked you if you knew Mrs. McKee had an order for custody from a California court?

A. Yes, I knew about it.

Q. And did you know that Mr. McKee had undertaken in writing not to take Terry out of the United States of America?

A. Mr. McKee didn't discuss it.

10 Q. Did you know it or not? A. I heard of it through the press and Mrs. McKee was the first one, I think, that told me.

Q. You told her it was none of her business?

A. I didn't say it at that time.

Q. Do you say that you didn't say that to Mrs. McKee when she came back with the medicine for his cold?

MR. LOCHEAD: She has not said that.

THE WITNESS: Mrs. McKee was told when she came to the door that Terry and his father were out, there was nobody there for Mrs. McKee.

20 MR. BROCK:

Q. Did Mrs. McKee tell you when she left in the afternoon that she was bringing medicine for Terry?

A. She did not.

Q. You deny that? A. She did not tell me.

Q. Now then, Mrs. Ament, do you remember the occasion when the Hiller children were out in the car?

A. I remember of Mrs. McKee calling a lady at the door Mrs. Brock and her children. I recall that but I can't recall Mrs. Hiller being there.

30 Q. You have learned since, of course, it wasn't Mrs. Brock, haven't you?

A. I have not.

Q. Did you see two children in the car?

A. I saw you sitting in the car.

Q. You saw me sitting in the car?

A. I was quite sure it was you.

Q. I wish to inform you --

MR. LOCHEAD: Now, you are asking questions, you are not giving evidence, Mr. Brock.

40 MR. BROCK: Q. Do you say, Mrs. Ament, you saw me in the car? A. I thought it was you, it looked like you.

Q. Do I look like a woman?

HIS LORDSHIP: Mr. Brock, you are getting into a very involved situation here. I suggest you stay away from it.

MR. BROCK: Q. Did you see two children in the car?

A. I did not.

Q. You didn't see two children?

A. No, I saw a man sitting in the car and I took it for granted it was you.

Q. We will stay away from that. Were you asked at that time if Terry could just step out of the house and see these children and say hello to them? A. No;

10 Mrs. McKee, after I refused the lady at the door, she said, "Well, tell the children to come up on the verandah, they can come up on the verandah if they want to." Mrs. McKee informed me to tell Mrs. Brock to come in and bring the children in and that I refused and --

Q. And you --

MR. LOCHEAD: Let her finish.

A. When I refused the lady at the door admittance she said, "Well, have her bring the children up on the verandah, they can come up on the verandah if they want
20 to." Those are the exact words.

Q. Did you say the children could not come up on the verandah? A. It was our house.

Q. Did you say they couldn't?

A. I didn't say anything more, I didn't answer Mrs. McKee.

Q. You did know Mrs. McKee wanted Terry to meet the two little Hiller girls?

HIS LORDSHIP: I don't think you can assume that. All she said was Mrs. McKee said "Bring the children up
30 on the verandah."

MR. BROCK: Q. What children did you think they were? A. Yours.

Q. You thought they were my children?

A. Yes, from what Mrs. McKee said. She said, "Come right in, Mrs. Brock, and bring the children in, I want them to see Terry".

Q. You remember you are under oath?

MR. LOCHEAD: She remembers all right.

HIS LORDSHIP: Incredible as it may sound, Mr. Brock,
40 I think Mrs. Ament means it.

MR. BROCK: Q. Then, you said Mrs. McKee dared Mr. McKee to hit her on one of these occasions?

A. Yes.

Q. Then, Mrs. Ament, did Mr. McKee threaten to hit her? A. No, he did not.

Q. It seems a funny thing she would say that then.

MRS. WILHELMINA AMENT -- Witness for Defendant --
Cross-Examination
Re-Examination
MOSES HENRY STEVER -- Witness for Defendant -- Dir.-Exam.
315

Now, you have said that Terry had a normal temperature when you took his temperature?

A. Yes.

Q. What is a normal temperature? A. 98.2.

Q. Well, there is just one more question, I think, Mrs. Ament. When you told Mrs. McKee when she was there to see her child about the cold, you told her to mind her own business. Didn't you think Mrs. McKee had any
10 right or business bringing medicine to Terry?

A. Yes, she had, but she didn't mention the medicine to me.

Q. Did she have a parcel with her?

A. I didn't see any.

---RE-EXAMINATION BY MR. LOCHEAD:

20 Q. Just one or two questions. My friend has referred you to visits made to your house by various of the children of Mr. McKee by his first wife?

A. Yes.

Q. Have you seen any of these children since last December? A. Yes, I have seen Muir and Mark and Julian and Joanne.

Q. Where and when, if you recall, did you see Muir? Perhaps we can shorten it, were any at your house?

A. Yes, they were all at my house.

30 Q. On one occasion or more than one occasion?

A. More than one occasion.

Q. That is all, thank you.

---Witness withdrew.

MOSES HENRY STEVER, sworn,

40

---EXAMINED BY MR. LOCHEAD:

Q. Where do you live? A. In Wellesley Township.

Q. I believe you are a brother of Mrs. Ament, the last witness? A. Yes.

Q. And therefore a cousin of Mr. McKee's first wife?

A. Yes.

Q. Who lives with you in your place in Wellesley township?
A. My wife and they are all home excepting four children, two are married and two are single.

Q. How many children have you altogether?

A. Ten.

Q. You have six children living at home with you?

10 A. Yes.

Q. What is the variation in the ages of those six children?
A. There is about three years variation.

Q. How old is the youngest? A. Five and a half.

Q. How old is the eldest, the eldest who is at home?

A. He will be 20.

Q. And the youngest is five and a half?

A. Yes.

Q. And there are four more between those two ages?

20 A. Yes.

Q. I believe you have one son Murray?

A. No.

Q. I believe you have one son called Murray?

A. Yes.

Q. How old is he? A. Seven.

Q. Where is your farm with relation to Mr. McKee's farm?

A. Mr. McKee's farm is directly north of mine abutting my farm and another farm.

30 Q. I am speaking particularly about the farm where the house is on which Mr. McKee lives.

A. That is on the opposite side, the hundred of mine is just across the road.

Q. So you are neighbours, close neighbours?

A. Yes.

Q. Do any of your children go to school?

A. Yes.

Q. How many? A. Four going to school.

Q. What school do they go to? A. They go to

40 S.S. 3.

Q. Is that the same school that Terry McKee attends?

A. Yes.

Q. By the way, have you any connection with the school?

A. I am a school board member.

Q. How long have you known Mr. McKee?

A. I believe for 40 years when he came on his honeymoon.

Q. Up until Mr. McKee came to Canada to live in December of 1946 had you seen him in the intervening 39 or 40 year period?

A. Oh, yes.

Q. How frequently? A. Just offhanded I don't know, we have met different times and I went over to visit him.

Q. You were over there and he was over here a great 10 many different times?

A. When Mr. McKee made these visits to Ontario, yes.

Q. Did he come alone? A. He brought his wife and I believe at times I remember, I didn't particularly memorize it but he had his family with him.

Q. As a matter of fact, I believe his wife's father was born in Wellesley township?

A. Yes.

Q. And moved to Michigan? A. Moved to Michigan.

Q. Did you have anything to do with the purchase 20 of this farm that Mr. McKee has?

A. I did.

Q. How many acres is it? A. 350.

Q. And when was that farm purchased?

A. In the fall of 1944 Mr. McKee visited my house and we got talking; I was building a silo and he said --

Q. Do not repeat any conversation you had with Mr. McKee. You can say he gave you certain instructions and you can tell us what you did.

A. He instructed me to buy a farm. 30

Q. Did you do that? A. Yes.

Q. When did you complete the purchase?

A. We completed the purchase in 1945, March 31.

Q. That was a purchase for Mr. McKee, is that right?

A. Yes.

Q. What in general have been the relations between Mr. McKee and his family and you and your family?

A. Well, we have had visits and we have been over and some of their family has been over.

Q. I was speaking more of the feeling that existed 40 between the two families?

A. Very friendly, very fond of them.

Q. And by the way, when was the last time you were at the Port Austin home?

A. The last, I believe, was May.

Q. May of what year? A. This past year.

Q. May of this year? A. No, last year, 1946.

Q. Who were at the Port Austin home at that time, who were living at the Port Austin home?

A. Miss Eastman and Mrs. Guislain.

Q. That is Mr. McKee's daughter Joanne?

A. Yes, and her three children, my brother Joe, and Muir was there and Pete was there and Mark was there.

Q. That is Mr. McKee's son; Muir, Pete and Mark, and I believe Pete is a nickname for Malcolm?

10 A. Yes.

Q. When you say "Joe" I believe you mean your brother Joshua?

A. Yes.

Q. Was Terry there? A. Yes.

Q. Was Julian there? A. Yes.

Q. I believe his nickname is Jude, is that correct?

A. Yes.

Q. Were you able to observe the care and attention that Terry was receiving at that time?

A. Yes.

20 Q. How long were you at the Port Austin home on that occasion?

A. On that occasion I believe I was there one or two days, from Wednesday to Sunday evening.

Q. About four or five days? A. Yes.

Q. What did you observe as to the care and attention Terry was receiving?

A. Well, he had his freedom to do any of the things he liked, to play when he liked, and he was looked after in every way I could see. I think he was better taken care of than my children and I think my children get

30 good care.

Q. What about his breakfast?

A. There was plenty of breakfast there.

Q. Did he get his breakfast? A. Yes.

Q. Who prepared his breakfasts? A. Miss Eastman.

Q. Did you have your meals there while you were staying there? A. Yes.

Q. How were they? A. They were better than I have at home. We have good meals at home and they were better than I got at home.

40 Q. Were you able to observe as to when Terry went to bed? A. He was put to bed at a regular time unless his father called him, if he happened to be out and called him on the phone and wanted to talk to him. Mr. McKee was with him practically all the time when I was there and he always had gone to bed about nine o'clock.

Q. Now then, did you ever see Terry while he was staying at your sister's home, Mrs. Ament's?

A. Yes.

Q. How often? A. Oh, quite often.

Q. What did you observe, if anything, as to the attention Terry was receiving there?

A. He got as good attention as anybody could get, no one could give him more.

10 Q. In particular, what do you say as to his being clean or not? A. He was kept perfectly clean.

Q. Was he tidy or not? A. Tidy.

Q. Now then, I believe Mr. McKee and Terry stayed at your place for some time after they left the Ament house?

A. Yes.

Q. When did they first come to your place?

A. I believe they came up on the Good Friday.

Q. And how long did they stay there?

20 A. Well, they stayed there and Mr. McKee left on Sunday or Monday, I am not too certain, and Terry came back and stayed and went to school and Mr. McKee came back on the Wednesday following.

Q. Terry and Mr. McKee were living with you for some time?

A. Yes.

Q. Aside from the week-end visit over Easter, when did they start living with you?

A. They started, I believe, just when the school started.

Q. After the Easter holidays? A. Yes.

30 Q. Did Terry start to school then? A. Yes.

Q. How long did they stay at your place?

A. Till the house was completed for him to move in, I believe it was some time in the beginning of June.

Q. When you say until the house was completed, whose house do you mean?

A. Mr. McKee's house.

Q. Do you know why they were at your place rather than at Mr. McKee's own place?

40 A. They were remodelling the house, installing lights and so on and water was piped up to the house, and the men were working on it.

Q. How about Terry's attendance at school?

A. He went to school from our place with the children and had a little pony and they drove to school.

Q. Did your children drive with the pony and carriage with him? A. Yes.

Q. Now then, while they were staying at your place did Terry go to church and Sunday-school?

A. Mr. McKee took him to his church and when we went Mrs. Stever took him to our Sunday-school.

Q. How often did that happen? A. That was every Sunday he was there, when he wasn't with his father. He mostly went in the afternoon with his father and ours was mostly in the forenoon.

10 Q. He went either with his father or with your wife every Sunday? A. That is right.

Q. By the way, what in general are the relations or were the relations then between Terry and your children?

A. They were very fond of each other; my boy, if he was not at our place we could find him at Terry's place.

Q. Which boy is it of yours who is such a friend of Terry's? A. Murray.

Q. He is seven, I believe you told me?

A. Yes.

20 Q. Murray goes to this school? A. Yes.

Q. He and Terry go together? A. They mostly go together.

Q. By the way, you spoke about the neighbour's children; do you know whether or not the children up there have ever had parties since Terry has been there?

A. Oh, yes.

Q. Where? A. I am not always there but on several occasions they had parties at Mr. Wagner's and also Mr. Miller's.

30 Q. Are they neighbours? A. Yes.

Q. How about your house? A. We had a party at our house and they had a party at Mr. McKee's house just the other evening. Our children were there and we went over to get them after the party.

Q. By the way, while Mr. McKee and Terry were staying at your place who looked after Terry?

A. Mrs. Stever looked after him.

Q. What care and attention did she give him?

A. Just like one of her own.

40 Q. What did you observe and are you able to tell us as to Terry's behaviour and conduct in general?

A. He is full of life and he is humourous and he is a happy boy. He likes lots of fun but he is not rough at all, and we like him very much, the children like him and are very fond of him.

Q. What about his health? A. He is the picture of health.

Q. Have you seen him frequently? A. I used to see him nearly every day.

Q. Have you noticed nervousness in Terry?

A. No, he is not a nervous boy at all.

Q. How does he compare in size, by the way, with your son Murray?

A. He is a head taller than my son the same age.

Q. What about his weight? A. He is quite a bit heavier than my boy.

Q. Now then, you told us you saw Terry almost every day since he has been living in his own house, have you ever been in his house?

A. Yes.

Q. Are you still in Mr. McKee's house from time to time? A. Oh, yes.

Q. Have you observed anything as to the care and attention Terry receives in his own home?

A. Yes.

Q. What do you say about it? A. It is good, splendid.

Q. Who administers this care and attention to him?

A. Well, Mrs. Stever.

Q. Who is that? A. That is my nephew's wife.

Q. And does she live in Mr. McKee's house?

A. Yes.

Q. With her husband? A. Yes.

Q. Do you know whether or not they are employees of Mr. McKee? A. Yes.

Q. Did you ever see Mr. McKee's daughter Joanne in his house? A. Oh, yes.

Q. She has been there for some time?

A. Yes.

Q. With her children? A. Yes.

Q. What did you observe, if anything, as to the relations between Terry and Joanne's children?

A. Oh, they play together and hitch the pony up and he takes them for a drive and so on.

Q. And what did you observe, if anything, as to the relationship between Terry and Joanne?

A. Well, they are friendly, she is good to him, just as good as she is to her own.

Q. Now then, Mr. Stever, there has been a lot of discussion about these roads. I take it from what you say that you live on the road which goes from Mr. McKee's house to the school, is that right? A. Yes.

Q. And I believe you are further away from Lynwood?

A. About half a mile from Mr. McKee's house.

Q. Towards the school? A. Yes.

Q. And what do you say about your ability to get through that road last winter?

A. Last winter was an extremely severe winter but I went through that road every school day to take the boy to Lynwood, with the exception of a few days when the
10 highways were blocked, but we got through with the horse.

Q. How far is it from your place to Lynwood?

A. Three and a half miles.

Q. How far is it to the school? A. We are a mile and a quarter.

Q. I believe you referred to last winter as being a very severe winter? A. Yes, it was.

Q. By the way, Mr. Stever, you told us something about the relations between your family and Mr. McKee's family before Mr. McKee came to Ontario. What are the
20 relations between you and Mr. McKee now?

A. Just the same as they have always been.

Q. Have you been able to observe the relations between Mr. McKee and Terry?

A. Terry is very fond of his dad, his dad has his whole heart, and the whole thing with him is his dad.

Q. How about the other way, what have you observed as to Mr. McKee's attitude towards Terry?

A. Just the same way.

30

---CROSS-EXAMINATION BY MR. BROCK:

Q. Now, Mr. Stever, will you tell us what your relationship was to Mrs. McKee, the first wife of Mr. McKee? A. First cousin.

Q. Now, of course, you are no relation to Terry whatever, are you?

A. Other than through marriage.

40 Q. Mr. McKee is no relative of yours except through marriage? A. No.

Q. He is not a blood relation of yours?

A. No.

Q. So therefore Terry, being the son of Mrs. Evelyn McKee, is no blood relation of yours?

A. No.

Q. And you are, in fact, a stranger to him; and Mrs. Stever, that is the Mrs. Stever where he stays now, is no blood relation to Terry?

A. No.

Q. And these things whom you refer to are not blood relatives of Terry's?

A. That is my children you mean, no.

Q. And the other children there? A. No.

10 MR. LOCHEAD: Except Joanne.

MR. BROCK: Now, from 1933 until 1942, did Mr. McKee bring his family to your place?

A. The time from when his first wife, my cousin, died?

Q. From 1933 to 1942 did Mr. McKee bring his family to your place? A. No.

Q. Did Mr. McKee come himself to your place?

A. When he was over he would call on me.

Q. Did he come to your place at that time?

20 A. No, he was going to call and I was away and I lived further from Kitchener than I do at the present time.

Q. You live west of Lynwood? A. We lived about twelve miles from Lynwood at that time.

Q. Mr. McKee never visited you from 1933 to 1942, is that correct? A. I can't remember that.

Q. Now, do you know of any proceedings for divorce while Mr. McKee was married to your cousin?

A. No.

30 Q. In which Mr. McKee was named as co-defendant?

A. No, I know nothing about it.

Q. No one ever told you? A. Only through this action now.

Q. Before that, while he was married to your cousin?

A. No, I know nothing about it.

Q. Now then, you say this farm was purchased in 1945?

A. Yes.

Q. And are there any mortgages on that farm now?

MR. LOCHEAD: How would he know?

40 MR. BROCK: Q. Do you know if there are any mortgages on that farm now?

A. There is under the present agreement, I believe.

Q. And how much is owing on that? A. Well, offhand I couldn't tell you.

Q. Now, have you any idea how much is owing?

HIS LORDSHIP: Do not tell me unless you know of

your own knowledge. Do not tell me what somebody told you.

MR. BROCK: My lord, this witness, if I remember correctly, has said that he made the purchase.

HIS LORDSHIP: That is right.

MR. BROCK: Q. How much did you pay down at the time?
A. At the time I bought it Mr. McKee sent part.

10 Q. How much was it? A. Two cheques came, I think it was somewhere near the neighbourhood of \$2,000.

Q. And that was for the purchase of a 350 acre farm?

A. No, that was for the one farm.

Q. You are just speaking of 1945, of having one farm?

A. One farm.

Q. In whose name was the farm? A. Mr. and Mrs. Carl B. Sarath, I believe, of Detroit.

Q. When you mention you were in Port Austin was Mr. McKee there during the time you were there?

20 A. Yes.

Q. All the time? A. Yes.

Q. And you don't know whether it was the custom for Muir, Pete and Mark to be there at this house in Port Austin all the time?

A. Muir was there all the time when he returned from overseas.

Q. Do you know where Mr. Sarath lives, that is the one whose name the farm is in?

A. I did have the address.

30 Q. Do you know who Mr. Sarath is? A. Yes.

Q. Who is he? A. He is Mr. McKee's brother-in-law, he is married to Mr. McKee's sister.

Q. Where does he live? A. On Ashland Avenue in Detroit.

Q. Now then, this house you say was purchased in 1945 in which Terry is kept now, is that right?

A. Yes.

Q. And the repairs were not done until June of this year, is that correct?

40 A. That is correct, we couldn't get the hydro.

Q. And any other repairs which you say have been done were not done until June of this year?

A. The help wasn't available.

Q. Is there a furnace in that house?

A. It is being installed.

Q. Is there a furnace in the house? A. It is being installed.

HIS LORDSHIP: I suppose the obvious answer is at the moment, no.

A. No.

MR. BROCK: Q. How old is this house?

A. Well, I couldn't say.

Q. It has been said it was an old house 50 years ago.

HIS LORDSHIP: I think it was indicated it was some-
10 thing in excess of 60 years old.

MR. BROCK: Q. Would you know about it?

A. I have been there 51 years and it has been built since I have been there and remodelled.

Q. Now, is there a concrete basement in this house?

A. Yes.

Q. There is? A. Yes.

Q. Did you say the floors had been repaired, did you say there have been new floors put in?

A. There is a new part built onto it.

20 Q. How long ago? A. Not so long, I can't remember but it was built by Mr. Kenny.

Q. He was there how long ago? A. Mr. Kenny sold it and it was remodelled and he paid \$500 to put a verandah on it.

Q. Is that the verandah at the back of the house?

A. Yes, that cost \$500.

Q. Have you been up those steps lately?

A. Yes.

Q. They are pretty rickety, aren't they?

30 A. I suppose not being used it is.

Q. Now, you said that Mrs. Stever had taken Terry to Sunday-school? A. Yes.

Q. Where was Mr. McKee at the time?

A. He was up at his house; we called at his home to pick him up.

Q. And Mr. McKee pays Mrs. Stever and her husband for work at this house where Terry is kept?

A. I suppose he would.

40 Q. You do not suggest that strangers can take the place of a mother, do you?

MR. LOCHEAD: My lord, isn't that one of the things this Court has been called upon to decide?

HIS LORDSHIP: I think so. I think it is quite obvious, Mr. Brock, that no one quite takes the place of a proper mother.

MR. BROCK: Q. Now, when did Joanne and her three children come to live at this farmhouse?

A. Well, they were since just shortly after the house was ready to move into.

Q. How long after? A. Not very long, I can't just remember, but she was there not so very long after the house was completed.

Q. Was it in June or July of this year?

A. I believe it was June, but I am not too certain.

Q. Did you not tell us the house repairs were not
10 finished until the end of June?

A. No, they were being done in May and in April and I was there to help to do it.

Q. And is Joanne's husband there?

A. He was there.

Q. When did he come? A. I don't remember exactly just when he came.

Q. How long ago? A. A couple of weeks.

Q. And do you know whether or not Joanne's husband works?
20 A. Well, I understand he has an office somewhere in the States.

Q. Down in New Orleans, isn't it?

A. Down in New Orleans, I believe.

Q. Do you know if Joanne is expecting another baby?

A. I know the doctor, and it is not my business.

HIS LORDSHIP: If he was told, would it be evidence?

MR. BROCK: It would show she is not going to stay at this farm house.

HIS LORDSHIP: I do not think it shows anything of the kind. All it does is show her physical condition.

30 MR. BROCK: Q. Does Joanne go to Detroit at times or do you know?

A. Well, I don't know, I don't interfere with any of their business.

Q. Do you know if she goes to Detroit at any time?

A. I suppose she does, I understand she did go to Detroit.

Q. Does she take her children with her?

A. I am not there to see whether she does or not.

40 Q. That is all, thank you, Mr. Stever.

---The Court adjourned at 12.50 until 2.30 o'clock p.m.

---The Court resumed at 2.30 o'clock p.m.

HIS LORDSHIP: Now, you were reading from Mr. Cunningham's evidence.

MR. LOCHEAD: Yes, my lord, I believe I got to page

367 of volume 3. I see I have it marked at page 368, line 4.

HIS LORDSHIP: Yes, I have it at page 368.

MR. LOCHEAD: I will continue at line 5 down to line 13 of page 377.

---(Mr. Lohead reads the above commission evidence to the Court.)

10

MR. LOCHEAD: Now, my lord, that completes the depositions of Mr. Cunningham as to the events in 1942. Mr. Cunningham goes on to testify as to certain subsequent occurrences and there are two other witnesses who corroborate those earlier occurrences.

HIS LORDSHIP: If Mr. Brock wants to read any cross-examination he should put it in. I think we should follow what we ordinarily do if we have the witness in the witness box.

20 MR. LOCHEAD: Then, my lord, I propose to continue reading to page 390.

MR. BROCK: Your lordship will note my objection to the admissibility of the evidence read, the new evidence.

HIS LORDSHIP: The new evidence evidently concerned 1944 and 1945. What are you basing your objection on there?

MR. BROCK: That it is also res judicata on the same grounds.

HIS LORDSHIP: Yes, all right.

30 Now, I see the cross-examination starts at page 390. Do you wish to put any of it in, Mr. Brock?

MR. LOCHEAD: I have some of it I wish to put in myself. There are certain parts of the cross-examination I want to put in.

MR. BROCK: My lord, my position is I will have to consider whether I am going to put any in evidence from the commission at all.

40 HIS LORDSHIP: Aren't you at the stage now where you more or less have to make up your mind? If you want some time to consider it I am quite willing to give it to you.

MR. BROCK: If my learned friend is willing to go on, my lord --

HIS LORDSHIP: I suppose it is here and it is available to you if you want it.

MR. LOCHEAD: That was my understanding, my lord, we could both put in any parts we wished.

HIS LORDSHIP: You had better conclude what you want to put in.

MR. LOCHEAD: I have one or two additional references to the evidence, my lord. At page 411, line 22 to 412, line 26. This is cross-examination of Mr. Cunningham by Mr. Cloud.

MR. BROCK: I submit, my lord, my friend would not be able to put in evidence in cross-examination. After
10 all, this is not his evidence.

HIS LORDSHIP: I don't know. The evidence is here, why cannot he put it in? There may be something in that and if there is I would like to hear about it.

MR. BROCK: I submit he should not put that in.

HIS LORDSHIP: If it will help you at all, I will adjourn for five minutes.

---The Court then adjourned for five minutes.

20 MR. BROCK: My lord, I might have part of the cross-examination of Cunningham to read into the record, but I would ask your lordship that I may be able to read it in as reply evidence.

HIS LORDSHIP: Why; it is all part of the cross-examination. If I am to remember it I want to hear it now. If he was in the witness box here you would have to cross-examine him now. I have heard this evidence and if there is something further I would like to hear it now.

30 MR. LOCHEAD: Well, my lord, in fairness to my friend, before he proceeds to read in what he wishes as part of the cross-examination, I stated to your lordship that there were certain additional remarks made by the witness Cunningham that I wish to read into the record and I submit they should go into the record before Mr. Brock.

HIS LORDSHIP: Mr. Brock suggests you are not entitled to read those.

MR. BROCK: There is my general objection to all this.

40 HIS LORDSHIP: I think in fairness to you it should be understood that any cross-examination you put in is subject to your general objection. I do not want any misunderstanding about that.

MR. BROCK: I then would like to put in some of the cross-examination.

HIS LORDSHIP: This testimony was taken and I just have to take it for what it is worth.

I think he had better put in anything else he wants to.

MR. BROCK: Perhaps in the morning I can put in any part of the cross-examination.

HIS LORDSHIP: Are you prepared to put in any tonight?

MR. BROCK: No, I would like to read it over. I have read over part of it myself but I have not been able to
10 read it all.

HIS LORDSHIP: I think if you read it in the morning I will still have sufficient memory of this to get the general effect.

MR. LOCHEAD: In addition to those parts of Cunningham's evidence I have already read, I wish to read from page 411, line 22, to page 412, line 26, inclusive, which is part of Mr. Cloud's cross-examination and this is in relation to the Hollywood Franklin Hotel episode in September 1944.

20 --- (Above commission evidence read to the Court by Mr. Lothead.)

MR. LOCHEAD: Then, my lord, I would like to read from page 413, line 18, to page 414, line 8. Then from page 418, line 27, to page 419, line 3.

--- (Above commission evidence read to the Court by Mr. Lothead.)

30 MR. LOCHEAD: My lord, I would like to read page 429, line 24, to page 430, line 14.

--- (Above commission evidence read to the Court by Mr. Lothead.)

MR. LOCHEAD: My lord, that concludes the evidence of Cunningham I wish to present to your lordship, and if I may now pass to the evidence of Kenneth Davidson,
40 which is in volume 4.

HIS LORDSHIP: Is this about the same period of time?

MR. LOCHEAD: Yes, my lord, this covers part of the period of time in the spring of 1942 and also refers to the Hollywood Franklin Hotel episode. If I may read from page 436, line 11, to page 438, line 9.

---(Mr. Lochead reads the above commission evidence to the Court).

MR. LOCHEAD: Then, my lord, I propose to read page 438, lines 19 to 23.

---(Above commission evidence read to the Court by Mr. Lochead.)

10

MR. LOCHEAD: Then, my lord, I propose to read from page 439, line 26, to page 467, line 15.

---(Above commission evidence read to the Court by Mr. Lochead.)

MR. LOCHEAD: Then, my lord, if I may read from page 492, line 4, to page 495, line 11. This, my lord, is part of Mr. Cloud's cross-examination of this witness.

20

---(Above commission evidence read to the Court by Mr. Lochead.)

MR. LOCHEAD: Then, my lord, I wish to read from page 512, line 14, to page 519, line 1, inclusive. This, my lord, is re-direct examination, which presumably is similar to our re-examination.

30 --- (Above commission evidence read to the Court by Mr. Lochead.)

MR. LOCHEAD: Then, my lord, I wish to refer to the evidence taken on commission of Mary Veronica Cunningham, also in volume 4. Starting at page 532, line 9, to page 533, line 14, then reading from page 534, line 23, to page 563, line 3.

---(Above commission evidence read to the Court by Mr. Lochead.)

40 ---The Court was then adjourned until 10.30 o'clock a.m. on October 1, 1947.

---The Court resumed at 10.30 o'clock a.m. on October 1, 1947.

MR. LOCHEAD: My lord, that concludes the evidence

that I intend to read out of the commission concerning events other than the episode at McCarthy's ranch. I do not know whether my friend wishes to read in rebuttal in regard to these three witnesses now.

HIS LORDSHIP: I think he had better put it in now, I just mean the witnesses that have been read.

MR. BROCK: My lord, while it is fresh in your memory I would like to read part of the examination-in-chief
10 and part of the cross-examination of Kenneth James Davidson.

HIS LORDSHIP: Was the evidence in chief not put in?

MR. BROCK: No, not all, my lord. I would like to start at page 467, line 12. This is examination-in-chief of Kenneth James Davidson, one of the detectives. And I intend to read to page 483, line 22.

Now, my lord, I wish to read just a few questions and answers in the evidence of Mr. Cunningham.

20 ---(The following commission evidence was read to the Court by Mr. Brock:)

Page 397, lines 11 to 26.

Page 398, lines 1 to 6.

Page 400, lines 14 to 21.

Page 405, lines 24 to 26, and including line 1 of page 406.

Page 406, lines 10 to 13.

Page 408, lines 6 to 16.

30 Page 416, lines 9 to Page 418, line 26.

Page 419, line 24 to Page 420, line 10.

Page 422, line 25 to Page 428, line 3.

Page 430, line 15 to 22.

MR. LOCHEAD: My lord, by way of what I suppose may be termed re-examination I have two other excerpts I would like to read in the record. Firstly, in the evidence of Kenneth Davidson on page 510, line 16 to page 512, line 13.

40 Then, my lord, with regard to the evidence of Cunningham may I read page 400, lines 22 to 26 inclusive.

Then, my lord, on page 402, from lines 5 to 20 inclusive.

That is the evidence I wish to read in reply.

MARK THOMPSON McKEE, sworn.

DIRECT EXAMINATION BY MR. LOCHEAD:

Q. Now, Mr. McKee, where and when were you born?

A. Tipton, Iowa, on April 18, 1887.

Q. Where were you brought up during your early years?

A. On a farm in Iowa.

10 Q. With your parents? A. With my parents.

Q. What was your first occupation? A. Attend-
ing school and at the age of 15 I went to Michigan and
worked on the road selling goods.

Q. How long did you continue in that occupation?

A. For approximately three years.

Q. Then, what did you do after that? A. I went
to work in my father's furniture factory.

Q. Where was that? A. In central Michigan.

Q. How long did you continue in that occupation?

20 A. For approximately three years.

Q. Then, will you tell me, please, when you were
married to your first wife? A. When I was 21.

Q. That would be in 1908? A. Yes.

Q. Where did you live during the few years immediate-
ly following your first marriage? A. My father
had had financial reverses and we moved to a farm in
southwestern Michigan, the whole family.

Q. And you lived there with your parents and your
first wife? A. My father and mother, my grand-

30 mother and my two brothers and my sister and my wife
and myself.

Q. By the way, who had financial responsibility of
the household at that time? A. I was the eldest
son, and it was my job to support all of them, my
father was ill.

Q. What occupation did you have at that time?

A. I started selling insurance.

Q. How long did you continue in the insurance
business in that way? A. Well, I started as a

40 farm agent for a few months and then I became county
manager and then district manager, and in six months'
time I became state manager for the insurance company.

Q. What insurance company was it? A. The
Yeoman Mutual Life Insurance Company.

Q. How long did you continue with that company?

A. Until - well, I was elected shortly afterwards
treasurer of the company, and then a director and vice-
president. I continued with the company as a director

until 1940.

Q. When was it you became a director and vice-president?
A. In 1920.

Q. Then, how long were you actively associated with the business, was it up until 1940?
A. Well, I didn't spend all of my time, I served as a director and vice-president.

10 Q. Then I believe that you are a qualified attorney?

A. That is correct.

Q. When did you study law?
A. I was admitted to the Michigan bar in 1913 and I was admitted to practice before the supreme court of the United States in 1918.

Q. Then, in connection with your insurance work, did you have any affiliations other than the company you have mentioned?
A. Yes, in 1916 I became secretary and counsel of the Insurance Federation of Michigan which was an organization of insurance companies operating in the state, life, fire, casualty and surety.

20 Q. Any other affiliations?
A. The next year I became counsel of the National Council of Insurance Federations which was the national organization of the Insurance Federations all over the United States which later became the Insurance Federation of America.

Q. You were general counsel?
A. I was counsel.

Q. You mean c-o-u-n-s-e-l?
A. That is it.

30 Q. And then by the way, Mr. McKee, did you have any experience in the services in the United States during the first war?
A. Yes, I was first named by the governor to be vice-president and chairman of the American Red Cross in the state of Michigan, and later on I enlisted and was in the armed services and held the rank of first lieutenant.

Q. What branch of the services?
A. The Chemical Warfare Services.

40 Q. Then, when did you first become connected with the field of transportation, Mr. McKee?
A. In, I believe, it was 1920, I became vice-president of the Salt Lake and Utah Railroad and afterwards I was made assistant to the president of the American Short Line Railroad Association which was an organization of all the roads other than the class 1 roads, some 500 roads in the United States.

Q. The name, "Short Line" indicates they were shorter lines?
A. It was lines earning less than one million dollars a year.

Q. This was an association of all these lines in the United States? A. Yes.

Q. Did you have any further offices with that association? A. Later on, a number of years later, I became vice-president of the association, and on the death of the president I served for a short time as acting president of the association.

10 Q. While you were vice-president what in general was the nature of your work? A. Well, the duties were executive, having to do with transportation matters. I had a great deal to do with the conferences representing the short line railroads with the trunk lines.

Q. Then, by the way, Mr. McKee, how many brothers and sisters have you? A. I am the oldest and I have a sister and then two brothers.

20 Q. What in general, during your lifetime, have been the relations between yourself and your brothers and your sister? A. We have the closest possible family tie. As a matter of fact we are sort of a clan by ourselves, we stand together one for each and all together.

Q. Have you had any business relations with any of your brothers or sisters in the line or corporation relations? A. Yes, sir; I have.

Q. What were those relations, or if there were relations, what was the first one?

30 A. Well, my brother Max and myself organized the Sand Products Corporation in Detroit and later on my brother and I organized the McComb Publishing Company which publishes a daily newspaper at Mt. Clemens, Michigan, and a radio station.

Q. The publishing company also operates the radio station? A. Yes, an F.M. station.

40 Q. Have you had any connection with a steamship company? A. Yes, sir, our company, the Sand Products Corporation purchased the Wisconsin & Michigan Steamship Company, a company which had been operating on the lakes for some 50 or 60 years, and I became vice-president and afterwards president and I now am chairman of the board of the company.

Q. When was that purchase effected?

A. That purchase was made in 1935, I believe 1934.

Q. And in general what are the operations of the steamship company? A. It is a passenger and freight

automobile carrying line, operating the year round across Lake Michigan between Milwaukee, Wisconsin, and Muskegon, Illinois, and operating also a summer service between Milwaukee and Chicago. It has not operated this last year because of inability to get an additional boat but it has a franchise.

Q. Have you had any connection with the Greyhound Corporation?

10 A. Yes, sir; I was a director of the Greyhound Corporation and had to do with the purchase of the bus properties in the state of New York, which now make up the eastern Greyhound Corporation, a subsidiary of the Greyhound Corporation.

Q. What was your first connection with any air line?

A. I believe late in 1936 I became a director of American Airlines and then later on, in the latter part of 1937 I think it was, I became a director of Pan-American Airways.

20 Q. Now, some mention was made in the evidence last week, rather, I believe it was the week before last, Mr. McKee, about a Washington investigation. Will you explain that, please?

A. In order to be a director of both air lines in the United States you have to secure permission from the civil Aeronautic Board and they are required in law to have a hearing as to whether you can serve in both companies. When I became a director of Pan-American it became necessary that I ask permission to serve on both companies, and, when I found there was a division 30 in the Board as to whether it would be granted, I resigned from American Airlines and I stayed with Pan-American. I do not think any applicant has been ever granted permission to serve.

Q. You told us in 1937 you became a director of Pan-American; did you later obtain another appointment?

A. A short time later the Board of Directors elected me -- the management committee of the company functions during the recess of the Board and they meet every week and it is responsible for the management of the company 40 and reports each month to the Board of Directors on their actions and they are subject to the ratification of the Board.

Q. Are you still a member?

A. I am. I serve continuously.

Q. When and where does this weekly meeting take place?

A. They are held in New York City on Tuesday noon of each week.

Q. By the way, as a member of the executive committee of Pan-American Airways, what in general has been your chief work?

A. My chief work has had to do with a study of international relations of the company. We have subsidiary companies in practically all countries -- we operate in 68 different countries and mandates and we have a large number of subsidiary companies, not in each one, but we have an interest such as we have in China in the C.M.A.C. where we hold 20% interest. My work has been to keep in touch with what is going on in an international way in each of these countries and to get reports of our representatives on the ground and to keep myself thoroughly familiarized with what the entire international situation is so far as it effects our operations.

Q. So at the present time you are on the executive committee of Pan-American Airways and you are chairman of the board of a steamship company, and have you any position or office in Sand Products?

A. I am a director and vice-president of Sand Products as well as the steamship company, and they are what you call a family corporation.

Q. Have you any other active positions?

A. As a matter of fact my position with the steamship company and Sand Products is largely advisory. My principal activity is with Pan-American Airways.

Q. Now, in the course of your career, have you been engaged in welfare work of any kind?

A. Yes, sir; I was vice-chairman for two years of the National Child Welfare Committee of the American legion and then I was chairman of the National Committee I believe for three years. This committee did such work as arranging a programme for taking care of war orphans from the first war.

Q. Do you remember roughly the years during which you were chairman of this national committee?

A. Well, it was in the 20's, in the early 20's.

Q. And what in general was the work you did in that position?

A. Well, we inaugurated a drive for \$5,000,000. funds to take care of war orphans, and I did my part in that connection. Then we put in a professional organization of professional child welfare workers to take care of the war orphans all over the United States. We first started a couple of billets but soon found it was

much more satisfactory to work on the foster-home idea.

Q. And that has now been organized?

A. That has now been organized.

I was chairman of the Michigan Child Welfare Committee and started a billet at Otter Lake.

Q. What was that? A. That was the Michigan Child Welfare Committee of the Legion.

Q. If we may now pass to what might be termed your family history. By the way, when did the first Mrs. McKee die? A. May the 26th, 1931.

Q. I believe you and the first Mrs. McKee had eleven children? A. We had, yes, sir.

Q. Perhaps we needn't go into their education, but, Mr. McKee, what has been the education you have given to these eleven children? Are they all living?

A. They are all living. Meredith, the oldest child, went to Ward-Belmont College at Nashville, Tennessee, and graduated from the University of Southern California. Miles graduated from the University of Pennsylvania and later from Detroit College of Law.

Q. What is Miles doing now?

A. Miles works for Sand Products. He is also a member of the board. Hugh works for Sand Products. He went to the University of Southern California and to Michigan but he didn't finish; and Rose Marie went to college in Illinois and to the Women's College at the University of North Carolina and Jane graduated from the University of North Carolina. Jo Anne attended the University of Iowa but did not graduate.

Q. Yesterday in evidence there was some mention of the fact that somebody believed Jo Anne's husband had a position in New Orleans. Is that correct?

A. He is not in New Orleans.

Q. Where is he stationed? A. At Chicago.

Q. Then, the next child, I believe, is Mark?

A. Mark graduated from the University of Iowa at Iowa City.

Q. What work is he doing? A. Mark is working for the newspaper and radio station at Mt. Clemens.

Q. What about Cynthia? A. Cynthia started, she went to the John Brown School near Azusa and when she completed that she started in the University of Southern California but, on account of her health, she was unable to continue.

Q. Then, Malcolm? A. Malcolm went to school in California and to Marquette and then he went in the

services.

Q. And Muir? A. Muir is at the present time attending college in Michigan. He enlisted in the Marines and last year he attended Pasadena College for one semester and now he is attending college in Michigan.

Q. By the way, what was Muir doing this past summer?

A. Muir was working for a trucking company at Mt. Clemens. Julian attended Missouri State College last

10 year.

Q. Where is Julian now?

A. Julian enlisted in the United States army.

Q. When? A. The last of August of this year.

Q. Was that a voluntary enlistment?

A. That was a voluntary enlistment.

Q. In what we in Canada call the permanent force?

A. Yes, sir; the regular army.

Q. Now, then, while your children were attending these various schools what interest, if any, did you take in their education? A. I always took a great interest. As a matter of fact some of them I visited every month and those that were too far away I got to see at least every two months. I was checking on their work and seeing how they were getting along and trying to see that everything was going right as far as school was concerned. To me that was one of my greatest endeavours. I didn't have as much of an education as I should have had myself and I wanted to make sure all my children had an education and I spent many, many thousands
20 of dollars on my children's education.
30

Q. When your wife died what age were the children, some of them were in their 20's?

A. Yes, my daughter Meredith was married at that time and Miles was just graduating from the University of Pennsylvania.

Q. All I really want to get at is how many children did Mrs. McKee take over when she finally took charge of the household in 1934?

A. That would be in 1934 -- well, Miles and Hugh
40 were away, Rose Marie and Jane were attending college, Jo Anne was just finishing High School, so it would be from Jo Anne down.

Q. Then, Mr. McKee, as your children were growing up what opportunities, if any, did you give them in the line of travel? A. I always felt that was a very important thing so far as education was concerned. Just

for instance I can mention Cynthia -- Cynthia had a trip to Hong Kong, across to China by plane, and to Honolulu, to Mexico City, to Jamaica, and I think she went to Cuba, in addition to a number of other trips. You see, at that time I had passage for the family on the air lines, and so the family had an opportunity to make a great many trips. They went across the country and occasionally they would come to New York and some-
10 times there would be several McKees travelling at the same time in different directions. That is one of the reasons it was possible to send them to school in different parts of the country. I wanted them to get the feel of different parts of the country from where they were raised so they would have a better understanding of the people in various parts of the country. It was the same with the boys -- Miles has had trips to Bermuda and Mexico and Latin America -- and in fact all of them have. I felt that was something that was very important
20 and they used to go very, very frequently. I used to take the family and go all the way through Canada. I remember one time I had six of the children and I took them all the way across from St. John to Digby and up on the Ocean Limited.

Q. Then, will you tell us about the experiences of your sons during the second war?

A. Every one of my five oldest sons were volunteers. Miles and Hugh and Mark and Malcolm, (that is the one we call "Pete"), and Muir. Miles and Mark came out of
30 the war with captain's commissions in the Army, Hugh with a lieutenant senior grade in the Navy, Pete with a corporal's commission in the army, and Muir with a P.F.C. in the Marines. Muir served at Iwo Jima for the whole of that operation.

Q. How about Julian? A. Julian was too young to go in when the war was on, but he said he wasn't going to let his brothers get ahead of him so he enlisted himself. Every one of these six sons, the first five of them had honourable discharges.

40 Q. Now, Mr. McKee, there has been some mention in evidence about certain trusts you established, I believe in 1936?
A. Yes, sir.

Q. And those trusts were for whom? A. They were established for each one of my eleven children. I took the major portion, I would say four-fifths of everything I had and set it aside on a 21-year irrevocable trust for each of the children in consideration of the love

and affection I bore them, and so their future security, no matter what might happen to me, would be taken care of.

Q. Those trusts will mature in 1957? A. Yes, sir. I anticipated that in that year I will be 70 and I wouldn't be much concerned from then on.

Q. You are a trustee? A. I am a trustee but they are irrevocable trusts.

10 Q. What happens to the principle in 1957?

A. The principle and increment is turned over to the beneficiary, each one of the children receive their trust at that time.

Q. By the way, what has been the effect of the administration of those trusts, how does their present value compare with the value when they were set up?

20 A. I have never taken anything out of any of the original trusts, but I have been fairly successful in handling them, and I would say the trusts are worth at least twice as much as when they were established, and I hope to have them much more by the time they are completed.

Q. Now, then, Mr. McKee, coming to the time of your separation with the second Mrs. McKee, there has been some confusion in my mind as to the dates. When did that separation occur? A. Well, I think we agreed to disagree in December, 1940. Mrs. McKee told me she wanted to get a divorce.

Q. Where were you living at that time?

30 A. We were living in the Azusa home.

Q. How long did you continue to go to the Azusa home, until approximately what date? A. The last time I was in the Azusa home was, I believe, in August, 1941.

Q. What happened then? A. I came home and found in my bedroom closet a perfumed bathrobe belonging to a Peruvian gentleman, and I found he had been occupying my bed with my wife and my baby.

40 MR. BROCK: I object to the admissibility of this evidence.

HIS LORDSHIP: He was just saying he found a perfumed bathrobe belonging to a Peruvian gentleman in his bedroom closet.

MR. BROCK: It is on the general objection that nothing that happened prior to the order---

HIS LORDSHIP: I see, very well, I will note your objection.

THE WITNESS: I was greatly concerned, greatly wrought up, and I proceeded to take my younger children away from that home.

Q. Just before that, going back to 1934, I think Mrs. McKee's evidence was that you were married in 1933 and had a year in Washington and she took over the household?
A. Yes, sir.

10 Q. Up to the time of your difficulties in 1940, had she brought your children up properly?
A. I considered her an excellent mother, your lordship, up to that time.

Q. What happened after that was personally between the two of you. I can realize if she had a relationship with this man that it reflects on the children, but there was nothing in her attitude to the children, it was her attitude to you?
A. No, your lordship, my objection was Mrs. McKee had such a strong influence over my children. They believed anything she did was
20 right, as a matter of fact, any sin of hers seemed to them not to matter. I felt my children were being corrupted by what was going on in the house, and that was my objection. What Mrs. McKee did was her own business, but the effect on my children, that was my business.

Q. She is obviously a woman of very great personality?
A. A very, very strong personality, and she had a wonderful hold on the children, so much so that my daughter Cynthia, when I wanted Cynthia to go away with the rest and be on the McKee side instead of on
30 the side of the Peruvian gentleman, decided to remain with Mrs. McKee and the Peruvian gentleman, and I could do nothing about it.

Q. Apart from Cynthia what other children were in the Azusa house in 1941 at the time you are referring to?
A. Malcolm, he was sick at that time so I couldn't move him, and Julian and Muir had gone back to Port Austin at the beginning of summer.

Q. What about Muir?
A. He stayed in Port Austin.

40 Q. He did not return?
A. He didn't return.

Q. Where was Mark?
A. Mark was back in the east.

Q. Did he return to Azusa?
A. He did not, he went with me to Milwaukee.

Q. You said Malcolm was ill and couldn't be moved?

A. Malcolm was moved as quick as he was able to be moved.

Q. Where? A. To Port Austin and then to the home I established in Milwaukee.

Q. What about Julian? A. I got Julian right out by plane that very day.

Q. And I believe at that time the five oldest children were married and had their own homes? A. Yes.

Q. What happened to Jo Anne? A. Jo Anne wasn't there, I didn't see Jo Anne. Cynthia was the only one
10 of the two girls I saw, but later on Jo Anne discovered the truth of the whole situation and came east and was married and has been part of my immediate family.

Q. Ever since? A. Ever since.

Q. Now, then, Mr. McKee, what is your present attitude towards Cynthia? A. I love Cynthia, she is my own flesh and blood, and there isn't anything I wouldn't try to do for her. I didn't know about her marriage, and I hope she has a good husband and they have a happy married life together. I have tried to
20 get Cynthia to come back and to be part of the family a number of times, and her brothers and sisters want her back with the rest of us.

Q. Would you take her back if she came back?

A. Would I! With all my heart and soul. Cynthia and everyone of my children have an equal part in my will. I have made no discrimination against any of them, and I feel Cynthia has been misled and misguided and I hope some time she will be back with the other brothers and sisters.

Q. Cynthia mentioned in evidence last week, and I
30 believe she said she had not spoken to you or had not been in touch with you since you disowned her. What do you say about that? A. I never disowned Cynthia, I merely asked her to be on the McKee side or on the side of the Peruvian gentleman, and when she decided to remain with Mrs. McKee and the Peruvian gentleman there was nothing I could do about it. I have paid Cynthia out of her trust a considerable amount of money since that time. I never disowned her, I never disowned any of my children
40 and I never will. I just feel sorry that she saw fit to remain in an atmosphere of sin and deceit that my home had been turned into.

Q. There was some reference to payments made to Cynthia out of the trust. There was some reference to arrangements between her attorney and your attorney that she would get \$600. a year. I believe she said that

agreement was in 1944. What do you say about that?

10 A. My son Myles looks after most of the details concerning the trust and Myles was very, very anxious to have Cynthia return to the rest of the family, and I believe something was said about Cynthia needing some money so she wouldn't be dependent on Mrs. McKee. I believe Myles did arrange, temporarily at any rate, to give her from the trust \$600. a year, which met with my approval, but the trustee has sole discretionary powers to give or to withhold any of the income or pay all the income out, and he could pay out the principle if he so desired.

Q. All I was asking you was, was there or was there not an agreement between your attorney and Cynthia's attorney that she would get \$600. a year?

20 A. I don't believe so, I don't know of that. All that I know was that she was sent a cheque for \$1,000. and then cheques every quarter, just as the other children are given money from time to time according to what I feel their needs are.

30 Q. Cynthia also stated that the results of her Milwaukee action against you were that audits revealed that she and Jo Anne were paid the least since the trust was established. Was that correct? A. No, I believe four others received less. The Milwaukee action, of course, was to investigate the trust. I thought it was looking a gift horse in the mouth, but the result of the matter was, I think, that five of the children received more, and four or five received less than Cynthia had received. It was discretionary with the trustee whether they received any payments. It was my money that I put aside for them for their permanent and future security.

Q. Now, Mr. McKee, turning to the question of domicile. You told us, I believe, that you moved to Michigan with your parents at a very early age?

A. Yes, sir; 15.

40 Q. And then, I believe, for some years you still resided in Michigan? A. Yes, sir; I voted every year since I was 21 in Michigan, and I have voted practically at every election, and that has been my permanent residence in the state of Michigan.

Q. There has been evidence, and it is not denied, that there was a home in Azusa, California, and you lived in that home from time to time? A. I did.

Q. What was your intention at that time with regard to remaining in California as your permanent home?

A. I never had any idea of remaining in California. My permanent home was always in the state of Michigan, and I considered that my permanent home.

Q. While you had this house in Azusa, and during the years 1937 to 1941, did you retain your home in Port Austin?

10 A. I always retained my home in Port Austin.

Q. Did you stay in that home in Port Austin?

A. I did.

Q. Generally speaking, when? A. Generally speaking, in the summertime.

Q. With your family? A. With members of my family.

Q. Every year? A. I would say practically every year.

20 Q. It has been referred to as a summer home. Is it a summer home? A. It is a solid brick house with a furnace, and I have lived in it for approximately four winters. It is a permanent home, and we merely speak of it as the summer place because it is up on the lake, and there are summer cottages around it. It is right at the top of the thumb.

Q. Between Lake Huron and Lake Michigan?

A. Between Lake Huron and Saginaw Bay. It is just about straight over from Goderich.

30 Q. As a matter of fact, I believe on your property at Broken Rocks you do have a summer cottage as well?

A. Yes, sir; there is a small cottage down the road a piece.

Q. I believe that was referred to by Cynthia as the "little cottage"?

A. Yes.

Q. And in connection with your California residence at the beginning of the California trial in 1942, was there an issue on the question of jurisdiction to hear that action?

A. There was.

40 Q. Mrs. McKee claimed to be a resident of California?

A. Mrs. McKee claimed to be a resident of California, and I claimed she was a resident of Michigan, and it was very vigorously contested and the court held against me that she was a resident of California, and I was a resident of Michigan.

HIS LORDSHIP: As I understand it, if you are a resident of California, that is, if you establish a residence they take jurisdiction to deal with matters like

divorce after a certain period.

MR. LOCHEAD: I believe they do, your lordship. My lord, I have some law on that subject. It appears for purposes of jurisdiction, my lord, our words, "residence" and "domicile" are practically synonymous in California.

Q. Then, when you left the Azusa house at the end of August, 1941, where did you go to live? A. I rented a furnished house in Milwaukee.

10 Q. Why did you go to Milwaukee at that time?

A. Well, the boys -- I am talking about Julian and Muir and Peter -- liked Milwaukee, and they liked the idea of going to school there. Also at that time I was taking more active part in the steamship company, and the steamship company's office is located at Milwaukee. We had a number of problems with the steamship company at that time that required my attention.

Q. How long did you remain residing in Milwaukee?

A. For a period of two years.

20 Q. And while you were residing in Milwaukee what was your intention with regard to making Milwaukee your permanent home? A. I went back and forth to Port Austin. We went back and forth and spent a great deal of time at Port Austin. We considered that at all times our permanent home, and I voted in Port Austin, and I have voted, I think, for the last 20 years at every election that has been held except this year.

Q. Both when you were in California and when you were in Milwaukee? A. Yes, sir.

30 Q. Who lived with you in Milwaukee? A. Mark, and Malcolm, and Muir, and Julian and Jane and her husband, and their daughter, the baby Angeline, and when Terry came, of course Terry lived there also.

Q. When did Terry come to Milwaukee? A. Terry came early in December, 1942.

Q. After the California trial? A. After the California trial. I brought Terry from California to Milwaukee.

40 Q. You were given custody by the California judgment for nine months? A. Yes.

Q. My lord, at this point it might be well if certain misapprehensions were cleared up regarding the judgment of the California court in 1942. It is quite clear that Mr. McKee was given custody, care and control of Terry with three months right of access---

MR. BROCK: The document will speak for itself.

HIS LORDSHIP: I do not think there is any argument about that. He was given custody for nine months of the year, and the judgment said that Mrs. McKee could have custody for the three summer months.

MR. BROCK: And later on when the other had custody of the child, one of the parents was allowed to see the child once a week.

HIS LORDSHIP: That is right.

10 MR. LOCHEAD: Q. Now, did you have a housekeeper in Milwaukee? A. I did.

Q. Who was she? A. Jean's mother-in-law, Mrs. Nancy Leonard, the mother of my son-in-law.

Q. How long did she stay with you?

A. She remained until about March, 1944.

Q. Then did you have a subsequent housekeeper in Milwaukee? A. Then I secured the Bouchard family, Mr. and Mrs. Bouchard.

Q. They lived in the house? A. Yes.

20 Q. Can you recall the dates from which and to which Terry was with you in the Milwaukee house?

A. Terry came in December of 1942, I think about December the first and remained with me in the Milwaukee house till the last week in June when he went back to California to be with his mother during the three summer months.

Q. During what year? A. June of 1943.

30 Q. Terry was in California for those three summer months? A. Yes. Then he came back the first of October and remained with me until June the 30th, 1944, when I turned him over to Mrs. McKee by order of the Wisconsin Court in Milwaukee.

Q. By the way, what was Terry's attitude to you when you took him to Milwaukee in December, 1942?

A. Well---

HIS LORDSHIP: At that time he was what, -- two years?

40 A. Two years and about eight months. He was quite distant, he called me "Daddy Max" and called himself "Terry D'la Fuente". He was very distant until he became accustomed to me.

MR. BROCK: When was this?

A. December, 1942.

MR. LOCHEAD: Q. While you were in Milwaukee at this time were you required to leave Milwaukee from time to time in connection with your work?

A. Yes, I went to my New York meeting and I also went

to Chicago considerably. I had an office in Chicago and I could go down on the morning train and come back on the evening train.

Q. How long a run is it?

A. An hour and fifteen minutes only.

Q. And what care and attention did Terry get while in the Milwaukee home?

10 A. The best possible attention that I could provide him, the loving attention of his sister Jane and of his brothers and of Mrs. Leonard who was the grandmother of those children just as I was the grandfather of Jane's children.

Q. How about the care and attention he received from Mr. and Mrs. Bouchard? A. They had five daughters and Terry was the idol of the family. They didn't have any son and they thought it was wonderful to have a little boy to look after.

Q. What about Sunday School?

20 A. Terry attended Sunday School in Milwaukee after the first couple of months practically every Sunday and he has attended Sunday School since then every place we have lived.

Q. When he has been with you? A. Yes, sir.

Q. What church does he attend? A. The Protestant church in Milwaukee -- we attended the Presbyterian Church there.

MR. BROCK: They are both Protestant?

HIS LORDSHIP: Yes.

30 THE WITNESS: In Port Austin it was the community church -- it is the Protestant church of all denominations -- and then in Kitchener we went to St. Andrew's Church, and in Linwood there isn't a Presbyterian Church so he goes to the Lutheran Sunday School.

MR. LOCHEAD: Q. When did you leave Milwaukee, -- I don't believe you answered that?

A. I left Milwaukee on July the first of 1944 when I turned Terry over to Mrs. McKee. I went back to my home in Port Austin.

40 Q. Then, did you return to Milwaukee to reside?

A. I did not.

Q. You remained in Port Austin?

A. Yes, sir.

Q. Where did you take up your residence in Port Austin? A. At my own home there at the home of what we call Broken Rocks, Broken Rocks is the name for our sub-division.

Q. Is that the same house you had before?

A. Yes.

Q. What did you do with the house in Milwaukee?

A. It was just rented.

Q. You gave it up, did you? A. Yes, sir.

Q. Now, then, speaking about this Port Austin home has Mrs. McKee ever been there?

A. Mrs. McKee has been there, she spent one year there.

10 Q. How large a house is it?

A. Well, it has, I think, six bedrooms and two bathrooms and a dining-room and a kitchen and living-room, and there is a library and a hall. It is a well-built, substantial house.

Q. What would you say as to its worth, its value?

A. Well, I paid \$10,000. for it originally, and I would say that it might be worth somewhere between \$10,000. and \$15,000.

20 Q. Now, then, who lived with you in the Port Austin home when you moved there in the summer of 1944?

A. Miles and his family came up for a portion of the time, Hugh and his family came up and Jane and her family came up.

Q. Were those families there for the summer holidays?

A. They came two or three weeks at a time. We had a lot of room, but we had to divide it up, we couldn't have them all at once, we had to sandwich them in.

Q. Who else lived with you there?

A. Rose Marie and her family, Jane and her family.

30 Q. How about the boys? A. The boys were there also, Julian was there all the time, of course, but the other boys were in the army, Mark was in the army, and when I talk about Miles and Hugh and their families I mean the wives and children because the boys were on active duty.

Q. Did you have a housekeeper in Port Austin?

A. I did.

Q. What was her name? A. A cousin by marriage of the first Mrs. McKee, her name was Grace Pieper.

40 Q. How old a lady was she? A. She was in her 60's.

Q. How long did she stay with you?

A. Oh, for approximately a year and a half

Q. When did she first come to the Port Austin house?

A. Well, she came in the fall of 1944. My daughter-in-laws sort of managed the house for me while they were

there during the summertime.

Q. Did you have any other employee assistance while Mrs. Pieper was there? A. Yes, from time to time we would have additional help when we were able to secure it. The help situation due to the war work was difficult.

---The Court then adjourned until 2.30 o'clock p.m.

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---The Court re-convened at 2.30 o'clock p.m.

MR. LOCHEAD: Q. Now, Mr. McKee, reference has been made in evidence to a property agreement in 1941 between yourself and Mrs. McKee, and there has been read into evidence clauses of that agreement having to do with payments to be made by you on behalf of Jerry McKee, a son by her previous marriage. At whose insistence was that put in? A. It was inserted at my instance.

Q. Why was that? A. I was very fond of Jerry and wanted to provide for his education, and that is the reason I put this \$6,000., \$1,200. a year for five years in it, I wanted to make sure Jerry would have an adequate education.

Q. What is your present attitude towards Jerry?

A. I am very happy that Jerry still keeps the name of McKee, although it isn't necessary for him to do it any longer, and I am very proud for the fact he stood up for his mother the way he did.

Q. Reference was made this morning to certain trust agreements which were completed by yourself in 1936, which, of course, was before Terry was born. Now, what provision, if any, has been made by you for Terry's financial future? A. I carry \$100,000. insurance policy on my life. 80% of it is for the benefit of Terry; 20% is for the benefit of my son Julian.

Q. Who pays the premiums on that policy for insurance?

A. I pay the premiums from my own personal income.

Q. Why that particular amount of \$80,000.?

A. Well, when I created the trust for the other children of course Terry wasn't in existence. I didn't have assets to leave him an equivalent amount so I am trying to provide in the way of insurance so that Terry will get just as much as the other children.

Q. Who is the beneficiary of that policy, to whom are the proceeds payable in the event of your death?

A. They are payable 80% for the benefit of Terry and 20% for the benefit of Julian.

Q. What I mean, are they payable to Terry and to Julian themselves? A. No, my son Miles is trustee for Terry and Julian.

Q. And what discretion is exercised in your son Miles as to the disposition of the proceeds of that policy? A. Well, it isn't necessary for him to pay it out during their minority. When they become of age it is paid, and meanwhile he is authorized to take care of educational expenses and the like for Terry after my death.

Q. When you say he is authorized you mean your son Miles is authorized? A. Yes.

Q. Is he your oldest son? A. Yes, sir.

Q. Now, Mr. McKee, when we adjourned this morning we had just commenced to discuss your life after moving to Port Austin in the fall of 1944. You told us you had a housekeeper, a Mrs. Pieper, was there for about 18 months, which would carry you up to the late spring of 1946. Now, after she left who looked after the Port Austin home, or who were living there, that would be during the summer of 1946? A. Jo Anne.

MR. BROCK: Wait a minute; let the witness state that.

MR. LOCHEAD: It is a matter of simple arithmetic.

HIS LORDSHIP: He is asking about 1946. You can cross-examine when your turn comes.

MR. LOCHEAD: All right. When did Mrs. Pieper leave?

A. She left in the late spring of 1946.

Q. And did anybody come to the Port Austin home after she left to look after it, as it were?

A. Well, I employed Mr. Joshua Stever as gardner and stableman and Mr. Stever brought a Miss Nettie Eastman as cook.

Q. And how long did Mr. Stever stay?

A. Mr. Stever was there for two months.

Q. How long did Miss Eastman stay?

A. Miss Eastman was there until the late summer of 1946.

Q. Who were at the Port Austin home during the summer of 1946? A. The various McKee children, Jo Anne, Mrs. Guislain and her children, Miles McKee and his children, Hugh McKee and his family, Julian McKee and myself.

Q. And, by the way, when did Terry live in the Port Austin home during the period of time?

A. Terry returned from California the first of October in 1934 and remained---

Q. 1934, it is 1944, you mean, isn't it?

A. 1944.

Q. Yes. A. 1944, and he remained until the 29th day of June, 1935.

Q. Is it 1935? A. Oh, it is 1945.

10 Q. Just to pause there a moment, you say that Terry was there from the first of October, 1944, to the 29th of June, 1945. Now, was he in the Port Austin home at all times from the period of January the first, 1945, to June the 29th, 1945?

A. He was, he took a plane on the 29th in the evening with Julian and went back to California so he could be delivered to his mother on the first of July.

Q. Did he return to Port Austin?

A. He returned to Port Austin on October first, 1946, and remained until the day after Christmas of 1946.

20 Q. I think we skipped a year there. You told us he took the plane on the evening of June 29th, 1945, and went to California with Julian?

A. That is right.

Q. When next did he return to Port Austin?

A. October first, 1945.

Q. How long did he remain in Port Austin after October first, 1945? A. He remained until June the 29th or 29th, just a day or two before the time it would take him to go to California.

30 Q. He spent the summer of 1946 with his mother?

A. Yes.

Q. And has been with you since October first, 1946?

A. He has.

Q. Now, then, did you have any assistance in the Port Austin home after the summer of 1946? You have told us that the various children of yours with their families were there during the summer of 1946. Now, what about the fall of 1946?

40 A. In the fall of 1946, during the month of September I believe that Jo Anne was there.

Q. Do you know a man in Port Austin by the name of Shumacher? A. I do.

Q. Has he ever worked for you?

A. No, sir. He is a cashier of the bank, and he and his wife came to my home on October first, 1946, and took charge of the home for me.

Q. Now he and his wife -- did they have any children?
A. They have two children, a little boy approximately of five or six years old, and a little girl ten years old.

Q. Did these two children live with Mr. and Mrs. Shaumacher?
A. They did.

Q. How long did they remain in your Port Austin home?
A. They remained there until late in May 10 of 1947.

Q. Now, what about the care and attention which Terry received while he was with you in the Port Austin home from the fall of 1944 until December of 1946?

A. He received the best possible care that could be provided for him. The Shoemakers, during the period they were there took care of him just as they had taken care of their own children, and they were a remarkable couple. Prior to that time the other members of my family who were there gave him the same kind of care 20 and attention. There was nothing that he lacked.

Q. What was Mrs. Piper's attitude towards Terry during the time she was there?
A. She was very, very kind and very painstaking with him, and she was scrupulously neat and kept him in the same way.

Q. During that period in Port Austin about how many days a week or a month did you spend with Terry?

A. I would say four or five days every week.

Q. Now, what about going to school. Did Terry go to school while he was living in the Port Austin home?

A. He did go to school. 30

Q. When did he start to school?
A. He started to school in October, 1945, when he returned from California.

Q. And continued for how long?
A. He continued until the end of the school term which I think was about June 1st.

Q. And was his attendance regular or otherwise?

A. His attendance was regular.

Q. Did he go to school alone or did anybody else 40 from the house go to school?
A. We practically always took him down in the car, Julian would take him down in the car and then would go down to Bad Axe where he was attending high school, that is the county seat town, about 16 miles below Port Austin, or if he didn't do that he was taken in a horse and buggy.

Q. Did either of the Shoemaker children go to school?
A. The Shoemaker children did go to school,

the little girl went to school and when the Shoemakers were there Mr. Shoemaker would take his little girl and Terry to school in his car.

Q. What about Sunday School at Port Austin?

A. He attended Sunday School regularly, and practically always church also. He insisted if he went to church with me that I would have to go to Sunday School with him.

10 Q. Did you do that? A. I had to, yes, sir.

Q. You mentioned about Jo Anne being there, was she there with her children? A. Yes, sir.

Q. I believe you also said some of your other children were there with their children? A. Yes.

Q. How did he get along with them? A. They were his nieces and nephews, and he had a great time with his nieces and nephews -- there were a great many of them older than Terry and he used to have great fun having them call him "Uncle".

20 Q. How did Terry get along with the two Shoemaker children? A. Very, very well; he had a lot of fun with them.

Q. You heard Mr. Stever giving evidence in which he made certain statements; one statement was to the effect that Terry was up late a great deal. What do you say about that, Mr. McKee? A. I would say Terry generally went to bed some time from 8.30 to 9 o'clock, and he would generally have 10 hours' sleep and sometimes a little more, but he would average 10 hours' sleep.

30 Q. Another matter referred to was the question of breakfast and he said that on certain occasions Terry went without his breakfast. Do you know anything about that? A. Certainly I do not believe that Terry ever went without his breakfast.

Q. Did Mr. Stever ever make a complaint to you about it? A. Mr. Stever didn't make a complaint, and if he had of there would have been quick action.

40 Q. Then Mr. Stever also referred to, I believe, the fact -- he gave as his reason for leaving was the bad meals. Did Mr. Stever ever make a complaint to you about that? A. Mr. Stever didn't get along with Miss Eastman and anything Miss Eastman did was objectionable to him, so when he said he wasn't satisfied with the way she prepared his meals I said, "All right, here is some money, go ahead and get your meals down at the restaurant in the hotel if her cooking doesn't satisfy

you," because it certainly satisfied us and we were very particular.

Q. Why, as a matter of fact, did Stever leave your employment in June of 1946? A. Well, there was some difference, very vigorous differences between Miss Eastman and Joshua Stever, and it was much more difficult to get a good cook than it was to get a stable man, so naturally Miss Eastman remained.

10 Q. And Stever was the one who left? A. Stever was the one who left.

Q. Now, then, you have mentioned, Mr. McKee, that you came to Canada, came to Ontario towards the end of December, 1946. Had you previously had any business relations with Canada or Canadian firms?

A. I had had a great many business relations with Canadian firms.

Q. Had you ever done any work for the Canadian National Railway? A. I had.

20 Q. What was that work? A. The trustees of the Canadian National Railways, when Judge Fullerton was the chairman, came in a special train to Detroit to retain me as special counsel for the Canadian National Railways in connection with a certain action that was being taken by the United States government against the Canadian National Railways, and the Grand Trunk Railway for the conversation of the carferries operating between Milwaukee and Muskegon.

30 Q. What, in general, was the nature of the work that you were required to do? A. It was necessary that the matter be presented to the appropriate committees of the United States Senate and the United States House of Representatives, and endeavour to secure an amendment to the Shipping Act, and the Shipping Act has been the sacred cow to American legislation, and it was necessary to present the case very, very fully.

40 Q. As a matter of interest, was the amendment obtained? A. The amendment was obtained by unanimous vote of the House and Senate, and was approved by the President of the United States.

Q. Now, in connection with your business and professional activities, did you make trips to any parts of Canada?

A. I made a great many trips to Canada. Our company, the Sand Products, happened to have a dock here at Toronto, and we also had a great deal to do with the Canadian National and the Canadian Pacific Railways, particularly with the president and the chairman

of the Canadian Pacific Railways, Sir Edward Beatty, and the chairman and president, at that time, of the Canadian National Railways, Sir Henry Thornton.

Q. Did you have trips to Montreal? A. I visited Montreal approximately every month. It happened also that one of our companies were lessees of the Canadian National Railways property at Detroit at that time, of dock property. We had erected a dock on their property and we had a great deal to do with their traffic department and their executive department in connection with that operation.

Q. Do you know a man, Vernon Taylor? A. I do.

Q. How are you associated with him at the present time? A. Mr. Taylor is from San Antonio, Texas. He is a director of Pan American Airways, and has very large interests in Canada, mining interests in the Sioux Lookout territory, and he is the third largest stockholder in this Labrador steel operation which is now being carried on.

Q. Have you any business relations with Mr. Taylor in connection with his Canadian interests? A. Mr. Taylor has asked me to represent him in his business interests in Canada.

Q. Do you know a man called Robert Lehman?

A. He is the head of Lehman Brothers, bankers, in New York.

Q. Is he also associated with you? A. He is also a director of Pan American Airways, and since I have been in Canada he has asked me to look after certain interests that they have in Canada.

Q. Then, with regard to your personal relations in Canada and with Canadians, I believe it was stated by Mrs. Ament, and I presume it is not contradicted, that your wife's father was born in Wellsley township and moved to Michigan, that is correct, is it? A. It is.

Q. Can you recall when, if ever, you made your first trip to Canada with your first wife? A. On my honeymoon, approximately 40 years ago.

Q. And following that visit, did you make further visits of a personal nature to Canada? A. I made a great many visits of a personal nature.

Q. I was going to ask you to what section?

A. To Waterloo county, and particularly to Wellsley township. After I had typhoid fever, and lost about 40 pounds I came over there to regain my health and my weight.

HIS LORDSHIP: Q. Your wife's family were still there? A. Yes.

MR. LOCHEAD: Q. A number of them still are?

A. A number of them still are, something like 60 cousins, I believe she had in Waterloo county.

Q. Were these trips made by you, - I am speaking of the personal trips only - were these trips made by you alone or were you accompanied? A. Sometimes the

10 first Mrs. McKee would accompany me, and some of the children as well. Sometimes some of the children would go alone with their mother and sometimes she would bring over some of the children, but it was very, very frequent; they were the closest relatives that she had.

Q. As a result of these trips, did you develop any attitude towards Ontario? A. I formed a great liking for Ontario, and especially Waterloo county.

Q. There has been some evidence as to the purchase of a farm; when was the first purchase made?

20 A. In the fall of 1944 my cousin Moses Stever visited me in Port Austin, and I found out that a farm could be had, and it was purchased. I came over to his daughter's wedding the latter part of February in 1945, and made arrangements for the purchase, and the purchase was consummated early in March of 1945.

Q. Who furnished the money for that purchase?

A. I furnished part of it and my sister, Sue, furnished the rest of it.

Q. Is your sister Mrs. Sareth who was referred to yesterday? A. She is.

30 Q. In whose name was the title taken? A. It was taken in my sister Sue's name.

Q. That was the first farm? A. That is right -- 150 acres.

Q. Have you made a later purchase? A. Later on purchased two additional farms which purchases I made myself, and my sister was not associated in that.

Q. So at the present time you have what acreage?

A. 150 acres with my sister, and 200 acres myself.

40 Q. Are those properties adjacent? A. They are adjacent, they occupy the four corners, 100 acres on each corner, and 50 on the fourth corner.

Q. How many houses are there on these properties?

A. There are three houses, one on the 150 acres and one on each other 100 acres.

Q. Do you live in one of them? A. Yes.

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Q. Which one? A. The one on the 150 acres.

Q. Who lives in the other two? A. The hired help.

Q. Who are looking after this farm? A. Yes.

Q. By the way, how much of this farm is under cultivation? A. We are ploughing approximately 125

acres this fall and we have just completed a new silo to take care of the corn crop of this year. In fact,
10 I think we are starting to fill the silo tomorrow.

Q. What is the size of the house in which you live?

A. It is a house of five bedrooms and three other rooms.

Q. What are those three other rooms? A. There is a living room, a dining room and you might say a small kitchen and bathroom.

Q. And did you effect any improvements to this house recently? A. I did.

Q. When? A. This spring when I came over I
20 found that we couldn't get the Hydro in this year, so I put in a Delco plant, and I had the house and barn completely wired, and then I put in a water system, a hot and cold water system, water pumps and a bath and a kitchen sink, and an electric refrigerator, and at the present time I am having installed a hot air furnace.

Q. Will that be ready for this winter?

A. It should be ready next week, and I am having a new aluminum roof put on the house.

Q. By the way, on what date was it, if you remember,
30 that you came to Kitchener last December. Do you remember the exact date?

A. December 26.

Q. The day after Christmas? A. Yes.

Q. And what is the nature of your entrance to Canada; as a visitor or how?

A. No, for a number of years I have always had in mind that I wanted to retire and live in Canada in my later years, and I have been admitted as an emigrant, as a legal resident, as is Terry also.

40 Q. Now, what is your intention, Mr. McKee, as to your permanent home?

A. I intend to make my permanent home on the farm in Waterloo County, Wellesley township.

Q. How long have you had that intention?

A. I have had the intention for a few years past that at some particular time I was going to do so.

Q. Now, then, are you a Mason, Mr. McKee?

A. I am.

Q. Have you done anything about membership in the various Masonic organizations?

A. I transferred by Blue Lodge membership held in Detroit, one that I have held for nearly 35 years, to Kitchener.

Q. Have you been accepted?

10 A. I have. I transferred my Shrine membership, which is also for approximately 30 years, to the Mocha Temple at London.

Q. Have you been accepted by the Mocha Temple?

A. I have.

Q. Now, do you recall what date it was that you and Terry took up residence in the home of Mrs. Ament?

A. I think about the 29th or 30th day of December.

Q. Of what year? A. Of 1946.

20 Q. And how long did you and Terry continue to live with Mrs. Ament? A. We remained there until after the Easter holidays.

Q. That would be of this year?

A. This year, 1947.

Q. Now, then, while you were at the Ament home did Terry go to school? A. He did not.

Q. Why not? A. I consulted with the principal of the Public School in Kitchener and on his advice I secured a private tutor for Terry whom he recommended as one thoroughly qualified and one who had taught.

30 Q. Who was that private tutor?

A. Miss Rennie.

Q. When did she commence her work?

A. Early in January, I think it was the first week in January.

Q. How long did she continue?

A. She continued until we left Kitchener.

Q. After the Easter holidays?

A. After the Easter holidays.

40 Q. And how frequently did she come to give Terry these lessons? A. Five days a week for approximately two hours a day.

Q. Now, then, while you were in Kitchener did Terry go to Sunday School? A. Practically every Sunday.

Q. I believe you told us this morning it was to St. Andrew's? A. St. Andrew's Presbyterian church.

Q. And he also went to church? A. Yes.

Q. During the time you were at the Ament house how much time did you spend in Kitchener?

A. From five to six days a week.

Q. Where were you the rest of the time?

A. Attending my executive meetings in New York City.

Q. On Tuesday of each week?

A. On Tuesday of each week.

Q. And what care and attention did Terry receive while he was at the Ament home in January, February and March of this year? A. I would say the best possible attention. My cousin Minnie is a very particular person and with a high sense of duty and she thought a great deal of Terry and tried to take the best possible care of him in every way.

Q. And how about yourself?

A. Well, naturally I did everything that I possibly could to make the lad happy and to aid in his development.

20 Q. Was he kept clean? A. He was kept scrupulously clean, cleaner than he wanted to be kept.

Q. You heard the evidence of Mrs. McKee and Mrs. Hiller that on at least one occasion when Terry paid a visit to the Hiller home he was in a very dirty condition. What do you say about that?

A. I would say that that would be impossible, that it was not so.

Q. How about his clothes?

30 A. I purchased together with my cousin Minnie's daughter the best clothes we could find in Kitchener for Terry and when he visited his mother he generally wore those clothes.

Q. Mrs. McKee stated in her evidence she had made some clothes for him; I suppose that is true?

A. Yes.

Q. Did Terry wear clothes she had made?

A. He did.

Q. Now, then, at what hour did Terry go to bed while he was staying at the Ament home?

40 A. Sometimes at eight o'clock, sometimes eight-thirty and sometimes nine o'clock, varying times. It would depend a little bit if it was a Friday night quite often I would take him out on his toboggan down to the park and we would slide down the bridges and then he might be later than he would ordinarily be.

Q. Aside from the time you took him out did he ever play outside on other occasions?

A. He did, he used to go out and make snowmen.

Q. What was his attitude to Mrs. Ament?

A. He was very fond of Mrs. Ament, he thought a great deal of her.

Q. Did you notice any nervousness about Terry?

A. I never noticed -- well, Terry isn't a nervous boy. I never noticed any nervousness, I did notice a certain amount of fear after the altercation at the

10 Ament home.

Q. When was that approximately?

A. Well, that was in March.

Q. What altercation do you mean, who was involved in the altercation? A. I am referring to when the gang came to the door and tried to break in.

Q. Who was in that gang?

A. There was two cars -- one car, I didn't know whether they were detectives or not. Possibly they weren't detectives, newspaper men with a big camera.

20 I think there were two or three men in that car and in the other car was Mrs. McKee and the gentleman whom I now know to be Mr. Pulfer.

Q. You say you noticed certain fear on Terry's part after that? A. I did.

Q. Now you told us, I believe, that you left the Ament home after the Easter holidays of this year. Where did you go to live then?

30 A. We went to the home of Moses Stever until we got our place ready, and I was trying to hurry on getting the work of the plumbing and so on installed.

Q. Why did you go to the Stever home rather than remain at the Ament home?

A. Because I wanted to get Terry started in a country school.

Q. Why a country school?

40 A. Because in a country school he wouldn't be a marked boy. In Kitchener everyone knew about Terry McKee. All the children going to school would have him as a marked boy reading about it in the paper and I didn't want folks talking about it and I knew in the country they were not so curious about other people's business.

Q. Now, how long did you and Terry stay living at the Moses Stever home? A. Until our place was ready some time in May.

Q. And what sort of care and attention did Terry receive there at the Moses Stever home?

A. Mrs. Stever is a very capable mother and she took care of Terry just as one of her own.

Q. And in fact did Terry go to school while he was there? A. Terry did go to school, Terry started to school and went to school with the Stever children.

Q. The same school as now? A. Yes.

Q. How is his attendance?

A. The same as ever. He didn't miss any.

10 Q. How many days were you able to spend with him during the month or five weeks at the Stever home?

A. I would say I was there about four days a week. Part of that time I was in town in Kitchener in connection with this case conferring with you and certain other proceedings in connection with the case.

Q. When did you move into your own farm?

A. Some time in May.

Q. Have you resided there since? A. I have.

Q. Who have resided there with you?

20 A. Earl Stever and his wife, who are the couple that keep house for me, and Mr. Stever also works on the farm.

Q. How old are they? A. Earl is about 26, and his wife is about 24 or 25.

Q. You and Terry live there of course?

A. Terry and I.

30 Q. Anybody else? A. Jo Anne and her three children and Joel and Andre, my grandchildren from California came there and spent part of the summer with us, and Julian, of course, is there.

Q. Have any of your other children been at the Linwood farm in the time since you have been there?

A. Muir has been over.

Q. Has Jo Anne's husband been there?

A. He has been there.

HIS LORDSHIP: Q. I take it you cannot count on Jo Anne living there indefinitely? A. No.

Q. How do you propose to maintain the household if you have Terry?

40 A. What I propose to do, I have already arranged to have my daughter Jane and her family come up and spend several months with me. What I am planning to do is to always have some members of my rather large family at my home so that Terry will always have blood relatives with him.

MR. LOCHEAD: Q. What are your plans with regard to Earl Stever?

A. His wife is the housekeeper, and he is looking after the farm. They are very competent and take excellent care of Terry. Mrs. Stever is an excellent cook and an excellent housekeeper. They haven't any children of their own so she can devote herself largely to Terry.

Q. They are employees of yours? A. Yes.

Q. Since you have been in your home has Terry gone to school? A. Terry has gone to school regularly.

10 Q. How does he go? A. He has a pony and a pony cart and he drives the pony. Since the fall the school-teacher has also resided at our home so he goes over with Terry, they drive over together in the morning and drive back at night.

Q. Are there any other children that go with Terry?

A. They generally pick up Moses Stever's children down the road and they climb in and go along with them and come home with them.

20 Q. Have you a horse? A. We have four horses, and later on we propose to use the horse instead of the pony when the weather calls for it.

Q. Now, then, are there other children approximately Terry's age in this neighbourhood?

A. There are four children at the Stever home and there is the Carl Wagner's children, three girls, one younger, and one older, and one about Terry's age, and they are frequently at our home with Terry.

Q. Do they go to the same school?

30 A. They go to the same school. As a matter of fact Terry has parties quite often and he is planning now on having a Hallowe'en party and bring all the children from the school in. He had a party last week and then he is having one of his Sunday School classes.

Q. Does Terry go to other homes?

A. Terry goes to their homes. As a matter of fact he is always playing with some children, either at our house or at their house.

Q. How does he get along with them?

40 A. Terry is part of the gang. They have a nickname for him, "T" -- they all call him "T" McKee.

Q. What care and attention has Terry received since you have been on your own farm?

A. Every care and attention that a growing boy should have.

Q. How much time have you been able to spend with him there in your own farm?

A. Well, I worked it out now so that sometimes quite often I can have an early breakfast at home and come down to Toronto and take the plane to New York and do my work in New York and take the afternoon plane back to Toronto and be home again that night. Sometimes I am not able to do that and I have to leave on Monday afternoon but a number of times I have been able to work out so that I can spend a full six days of the week at home, not every time, but frequently so. Sometimes I am away one night and once in a while two nights.

Q. Will that situation change or continue?

A. I intend to have it continue exactly as it is. In the winter time because of plane conditions I won't be able to make it in a day, but I should always be able to make it in two days.

Q. Now, what about Terry's health generally within the last two or three years since he has been with you, since December of 1942?

20 A. I would say -- well, I had him examined by a doctor two weeks ago and he said he was in perfect condition. I had him examined by a doctor six months ago, in fact, and I always try to have him examined about twice a year. I have had his dental work taken care of so his teeth are in excellent condition. Terry is just an active, vigorous lad.

Q. And what about church and Sunday School since you have been in your farm?

30 A. Terry has attended Sunday School practically every Sunday. Now he goes to Sunday School at Linwood where Mrs. Stever is teaching, and I generally go down to church at Kitchener and sometimes he comes down with me.

Q. And what about his prayers, Mr. McKee?

A. I taught Terry to say his prayers and every night he has been with me he has said his prayers, and he asked the Lord to bless his mummy and daddy and all his brothers and sisters and to help Terry be a good boy -- starting out with, "Now I lay me down to sleep".

40 Q. Does he still do that? A. He still does that every night.

Q. Is Terry taking any instruction aside from school?

A. Terry is taking music lessons regularly.

Q. When did he start that? A. He started this fall. We have a piano and Terry is taking lessons and doing well, although it is difficult to get him to practise.

Q. It is not an unusual trouble. What about money?

Do you pay Terry an allowance?

A. Terry gets an allowance of \$1 a week if he does good work at school and does the chores around the house. He has a bank account in the Canadian Bank of Commerce and has \$100 in the bank and he has put money aside to put into the bank. I would say he probably spends about one-half of his dollar on pop and candy and things of that sort, and the other 50¢ he keeps aside. I want
10 to instill in him the habit of saving.

Q. What about his truthfulness?

A. To my knowledge Terry has never told me a lie.

Q. And what are your intentions with regard to Terry's education, Mr. McKee? A. Well, I have had my children educated all over the United States, and I always wanted to have one child, one boy, go to McGill in Montreal, and my idea is that Terry should go to college and I would like to have him attend McGill and graduate at McGill.

20 Q. Are you willing to send him to McGill?

A. I am.

Q. And look after him while he is there?

A. And look after him while he is there, yes, sir.

Q. By the way, Mr. McKee, have you ever discussed Mrs. McKee in Terry's presence? A. I have scrupulously refrained from doing that.

Q. How about Cynthia? A. Cynthia is a rather sad subject.

30 Q. I mean, have you ever discussed Cynthia in front of Terry? A. I have scrupulously kept away from that.

Q. Now then, have you taken Terry on any trips, Mr. McKee? A. Yes, this summer we had a trip that Mr. Bowman referred to, the two weeks trip down through the Maritime Provinces and Cape Breton Island, and before that Julian and Terry and I motored to Montreal, taking our time. I took him up to Ottawa and showed him the capitol, and then took him down through there and went to Montreal, and then we took the Canada Steamship Lines
40 ship and made a trip up the Saguenay, Julian and Terry and myself. Terry likes to be on a boat, that is something he likes a great deal.

Q. Has he been on boats before?

A. Yes, he has been on all boats, the Milwaukee Clipper operating between Milwaukee and Muskeogan. That is our steamship company and he has been up with

the captain and he always has taken a great interest in boats, and he did the same thing on the trip up the Saguenay. There were a number of little French children along, and he had a great time trying to make them understand him.

10 Q. Now then, there have been a few matters given in evidence by other witnesses, Mr. McKee, and I want to discuss with you firstly, I want to direct your attention to the action instituted against you by Mrs. McKee in Milwaukee.

MR. BROCK: You will note my objection, my lord.

HIS LORDSHIP: Yes.

MR. LOCHEAD: Q. You will recall one of the charges made in that action with regard to the California trial in 1942 was that you had colluded with the trial judge, Thurman Clarke, is that true or is it not? A. That is false.

20 Q. Did Judge Clarke ever give evidence in connection with that charge? A. He did.

Q. In your presence? A. In my presence.

Q. And in Mrs. McKee's presence?

A. In Mrs. McKee's presence.

Q. Where was that evidence given?

A. That was given in Los Angeles.

Q. Before a commissioner? A. Yes.

Q. On whose instance? A. At Mrs. McKee's instance.

Q. Judge Clarke appeared as her witness?

A. Judge Clarke appeared as her witness.

30 Q. What did he say on that occasion about the charges that had been made against him in Milwaukee?

A. He denied them in toto, every single one of them as absolutely false.

Q. There was also a charge in the Milwaukee action that you subjected the trial judge to your domination and control. What do you say about that?

A. That is false.

Q. There was a further charge that you colluded with Mrs. McKee's attorneys, Mr. Haumesch and Mr. Solomon?

40 A. That is false.

Q. There is a charge in that connection that you made a payment of certain money to Mr. Haumesch and Mr. Solomon. Did you make payments to them?

A. I made such payments as were directed and approved by the court in connection with the costs of the action.

Q. Then there was a charge that you were guilty of subornation of the perjury of your own children. What do you say about that?

A. That is false.

Q. Then there were charges in the Milwaukee action against the integrity of Joseph Scott, who appeared in the California trial as one of your counsel. Will you tell his lordship what Mr. Scott's position is at the
10 bar?

A. Mr. Scott is master of the Los Angeles bar, he has practised there for 49 years, and he is a man who refused an appointment as a federal judge.

Q. What is his position in California?

A. Mr. Scott is considered as one of the foremost citizens of the state of California.

Q. Now, it has been admitted in evidence that at one time Max de la Fuente instituted a slander action against you. What was the disposition of that action?

20 A. It was dismissed by Mr. de la Fuente.

Q. On the merits? A. On the merits.

Q. Mr. McKee, have you ever been named as a co-respondent in a divorce action? A. I have not.

Q. Did you ever admit to Mrs. McKee that you had used your friends to obtain your divorce?

A. I did not.

Q. Did you in fact use your friends to obtain your divorce? A. I did not, it would be impossible for them to have done anything.

30 Q. Do you recall at the conclusion of the trial in June, 1945, in California, there was a hearing before Judge Black, I believe, on the question of awarding attorney's fees. Were you present at the hearing?

A. I was.

Q. Was Mrs. McKee present? A. She was.

Q. That was in '45? A. Yes.

Q. Your lordship may recall I questioned Mrs. McKee about this. Did you give evidence on that occasion as to your worth?

40 A. I did.

Q. What did you say? A. I stated that my net worth, considering all the liabilities was approximately between ten and twenty thousand dollars.

Q. Was Mrs. McKee present? A. Mrs. McKee was present.

Q. Now, then, there has been reference in evidence to a trip made by Mrs. McKee to a place known as McCarthy's

Dude Ranch in California, and there will be further evidence on commission on that point. Mr. McKee, I want you to tell me when you first learned that your wife had ever stayed at McCarthy's Dude Ranch?

A. My first intimation of that was late last year in 1946, and I didn't have accurate knowledge about it until some time early in 1947.

10 Q. Now, then, it has been stated in evidence that in March of this year Mrs. McKee laid a charge of abduction against you. Were you served with a summons?

A. I was.

Q. Were you personally served? A. I was.

Q. Did you appear in court? A. I did.

Q. On one occasion or on more than one occasion?

A. I believe several times.

Q. That was in the magistrate's court in Kitchener?

A. Yes, sir.

Q. What eventually happened to that charge?

20 A. The action was dismissed.

Q. And did you have anything to do with that disposition? A. I was interested that it be brought to trial and I wanted to have it tried out and disposed of one way or the other.

Q. Now, perhaps you are not familiar with our legal terminology, Mr. McKee, as a matter of fact, was that charge dismissed or withdrawn?

A. I think it was withdrawn.

30 Q. Now, then, there is certain evidence, Mr. McKee, about the visits of Mrs. McKee to see Terry since her arrival in Ontario.

HIS LORDSHIP: Mr. Lohead, I take it you may not have overlooked this, but the matter I have to give some consideration to is the validity of the judgment in California awarding custody to Mrs. McKee. Are you going to go into that?

MR. LOCHEAD: My lord, it was my impression I had covered it by covering the domicile of McKee and his residence from time to time with Terry.

40 HIS LORDSHIP: As I understand it, I would like to know Terry physically was when these proceedings were under way and what his domicile was at the time of those proceedings.

When were the 1945 proceedings commenced?

THE WITNESS: They were commenced, I believe, in May of 1945.

Q. And when did the trial take place?

A. The trial took place in June, 1945.

Q. You commenced it? A. Yes, your lordship.

MR. LOCHEAD: Q. Then there was a cross-application, I believe, by Mrs. McKee?

A. There was.

Q. And the trial took place in June?

A. Yes, your lordship, in June.

Q. Do you recall, do not tell me if you don't recall
10 it, but do you recall the last day of the trial?

A. I think it was the 21st of June.

Q. As a matter of fact, the order does refer to those dates, my lord. Probably it speaks for itself. Where was Terry physically situated in May of 1945 when these proceedings were commenced?

A. At his home and my home in Port Austin, Michigan.

Q. Where was Terry physically situated during the trial in June, 1945? A. At Port Austin, Michigan.

Q. And where was your domicile -- that is probably
20 an improper question.

HIS LORDSHIP: Q. Where were you permanently residing during that year 1945?

A. At Port Austin, Michigan, I voted there that year and resided there.

Q. At that time where did you intend to live?

A. At Port Austin, Michigan, your lordship.

Q. Had you any intention at that time of changing your residence?

A. I had no intention at that time of changing my
30 residence.

MR. LOCHEAD: Is that sufficient on that point, my lord?

HIS LORDSHIP: I think so.

MR. LOCHEAD: Q. Now, on the question of these visits, it has been stated by Mrs. McKee that she was never allowed to take Terry out with her. Is that true? A. It is.

Q. Why was she not allowed? A. Because I was afraid she would spirit him away.

HIS LORDSHIP: Just one moment, if it is a fair
40 question, why did you commence proceedings in California under those circumstances. I realize you were facing a lawsuit in Wisconsin at the same time on the matter?

A. Your lordship, the vicious attacks that were made on the courts in California and on myself in Wisconsin in connection with the Wisconsin suit -- my counsel in California advised me to bring the action. It was brought on the advice of my counsel.

Q. As a result of the Milwaukee action?

A. As a result of the Milwaukee action. The papers were full of corruption, "McKee corrupts judge" and that was in Milwaukee, and frankly I resented it very much, perhaps more than I should have.

Q. And I take it Mr. Scott did as well?

A. Mr. Scott more than I did.

MR. LOCHEAD: Q. I had just asked you why Mrs. McKee
10 was not allowed to take Terry out with her since she has been in Ontario, and your answer to that was what?

A. My answer to that was that I was afraid she would spirit him away.

Q. Did you have any reason from previous experience to have that fear? A. I did, it had happened in California when Terry was in protective custody of his sister.

HIS LORDSHIP: Q. You are referring to the time Cynthia disappeared? A. I am, your lordship.

MR. LOCHEAD: Q. Mr. McKee, did you ever tell Terry
20 that you were willing to have split custody but that Mrs. McKee was not? A. I did not.

Q. Did I ever tell him that in your presence?

A. You did not.

Q. Now, then, you already referred to the time that these two cars were down on this Saturday afternoon, and Mrs. McKee was there with Mr. Pulfer and these two other men. Will you tell us briefly in addition to what you have already said, what happened that afternoon?

A. Mrs. Ament, Terry and I had just completed lunch.
30 I was lying down on the davenport and Terry was looking out of the window and he called my attention to the fact that his mother had just driven up. I immediately looked out the window and saw not only Mrs. McKee and Mr. Pulfer, the man whom I now know as Mr. Pulfer, but I saw a second car with three people in it, two chaps, rather heavy, rather burly, and the newspaper photographer with a large flashlight bulb machine.

Q. Did you know Mr. Pulfer at that time?

A. I didn't know Mr. Pulfer at that time.
40

Q. Did you know any of the other men? A. I didn't know any of the other men, and frankly I feared it was going to be a snatch. My cousin was not feeling well, Mrs. Ament, and I didn't go to the door or have her go to the door because in the first place I didn't know what was likely to happen. I was there alone and while I could hold my own with maybe one man, I didn't

know whether I could hold my own with three or four.

Q. What did the people do?

A. They came and hammered and banged on the door and peeked in the side window and hammered and hammered and the newspaper man was taking a photograph of Mrs. McKee and Mr. Pulfer hammering on the door.

Q. How long did this continue?

A. I would say at least for 20 minutes.

10 Q. What effect did it have on Terry?

A. It had a very bad effect on Terry. Terry was very much scared and was afraid they were going to get him.

Q. The following afternoon being Sunday I believe Mrs. McKee did pay a visit to Terry? Do you remember that occasion? A. She did.

Q. Where were you during the early part of that visit? A. I was upstairs on the second floor.

20 Mrs. Ament? A. I didn't hear the words distinctly. I could hear voices.

Q. You could hear a conversation?

A. I could hear a conversation.

Q. Did you actually come downstairs before Mrs. McKee left? A. I heard Mrs. McKee say she wanted to use the telephone to get a taxi to take us away. I came down then.

30 Q. What happened after that, don't go into the conversation, we have had that from Mrs. Ament, but what happened? A. Well, I suggested to Mrs. McKee that she not do so, that she not take him away, and also that Terry was a legal resident of Canada and subject to the actions of the courts of Canada.

Q. Did you lunge at her? A. I did not.

Q. To use her own words, did you bound at her?

A. I did not.

Q. Did you strike her? A. I did not.

Q. Did you threaten to strike her?

A. I did not.

40 Q. Did you use abusive language of any kind?

A. I did not.

Q. Then, were you present on the Sunday shortly after Easter when there was an episode about a strange lady coming to the door? A. Yes, sir.

Q. And where during the early part of that visit before the third person arrived were you?

A. When Mrs. McKee comes I always endeavour to be

in the house. I always endeavour to be in the house when Mrs. McKee was there and Mrs. McKee was just taking her departure. I went down through the side door preparatory to going over to take a bus to go on down and get my plane. Just as I started to the door I heard some voices raised, my cousin Mrs. Ament was remonstrating with Mrs. McKee.

Q. About what? A. About bringing strange
10 people into the house, people that Mrs. Ament said, she said - "This is not a public house and you are not entitled to bring people into this house", and I immediately came up, and just then a lady came up on the porch whom Mrs. McKee invited in and said, "Come right in, Mrs. Brock."

Q. You heard those words?

A. I heard those words.

Q. Did you see the lady? A. I saw the lady.

20 Q. Did you know who she was at that time?

A. I did not.

Q. Do you know who she is now?

A. I do not.

Q. What happened after that?

A. Well, my cousin then got Mrs. McKee's hat and coat and handed it to her, and suggested that since her visit was over she should leave.

Q. Did she leave? A. No, she said some unkind words to Mrs. Ament.

MR. BROCK: Q. Who did?

30 MR. LOCHEAD: There is only one other "she" there at that time.

MR. BROCK: Q. Who was it?

A. Mrs. McKee said some unkind words to Mrs. Ament and then came up to me and said, "Hit me, hit me, hit me, I dare you to hit me".

MR. LOCHEAD: Q. Did you? A. I did not.

Q. What happened after that?

40 A. Well, Mrs. McKee then said some other unkind words to both myself and Mrs. Ament and I suggested since it was the Sabbath Day she should not make a disturbance and that if she continued to make a disturbance it might be necessary to call the police in to see that she didn't continue to do so.

Q. Were the police actually called?

A. They were not.

Q. What was said after that?

A. Mrs. McKee said some more unkind words to me about

me and then she left.

Q. She left, did she? A. She left.

Q. Did you ask her to leave?

A. I suggested she should leave.

Q. Did you tell her to stay out?

A. No, I just told her she had better leave, her visit was through.

Q. By the way, on that occasion did you lunge at

10 Mrs. McKee? A. I did not.

Q. Did you bound? A. I did not.

Q. Did you threaten to strike her in any way?

A. Mr. Lohead, how foolish it would have been for me to do anything of that kind with this litigation on.

HIS LORDSHIP: Q. I take it you restrained yourself?

A. I restrained myself, your lordship.

MR. LOCHEAD: Q. Mr. McKee, I am going to show you part of Exhibit 19, which is a letter written by me to Mrs. McKee's solicitor, dated April 25th, 1947. Will

20 you examine that letter, please? Was that letter written by me on your instructions?

A. It was.

HIS LORDSHIP: What is that?

MR. LOCHEAD: That is the offer of settlement, my lord.

Q. Are you still agreeable to the terms of that offer? A. I am.

Q. Now, then, Mr. McKee, what is your present attitude towards Terry? A. Terry is my son whom I love very

30 much and whom I am proud of and whom I am very anxious should grow up to be a right kind of man, that he be able to carry on the family tradition just as his older brothers have and if he desires to be connected with the family businesses and carry them on that he be able to do so; that he be a lad of honour and truth and brave and kind and furthermore that he not develop into the playboy type. In other words, I am so anxious to have Terry away from the Hollywood atmosphere, I prefer Linwood to Hollywood. I want Terry to have every chance and op-

40 portunity, but more than that I want him to grow up to be the kind of a lad that is straightforward and honest and the kind of a lad who knows what work is. That is the thing right now on the farm. Terry is commencing to learn the real things of life and not the artificial things.

Q. And do you honestly and sincerely believe you can bring that about? A. I believe I can bring that

about. That is my sole endeavour, nothing in my life counts as much as that to me. I am dedicating my remaining years I have in order to accomplish that. I feel that is the most worth while thing in life for me.

CROSS-EXAMINATION BY MR. BROCK:

10

Q. Now, Mr. McKee, you were born in Tipton, Iowa?

A. I was.

Q. You were born there 60 years ago, you are about 60 years of age now? A. I am.

Q. When you were about 15 your father moved to Lakeview, Michigan, is that correct?

A. Approximately that time.

Q. You and your father went into business there under the name of the Tabbard Office Supply Co.?

20

A. I did not.

Q. You were connected with your father?

A. I was working for him.

Q. What was the name of the company?

A. The Tabbard Office Supply Co.

Q. That was the name of it? A. Yes, sir.

Q. By the way, just before you start with the Tabbard Supply Co.; is it not true your father ran for mayor? A. No, he was elected president of the village about a year after the factory started.

30

Q. Now, isn't it true that he was elected president, or mayor as we call them; isn't it true he was elected president before the business started?

A. No, sir, the factory was established for a year. My father was not there before the factory was established.

Q. In any event, as a result of his activities as president or mayor he obtained a deed to a certain parcel of land from the village, did he not? A. He did not.

HIS LORDSHIP: What has that got to do with the matter?

40

MR. BROCK: My lord, there has been a great deal of evidence heard here.

HIS LORDSHIP: Yes, but what has Mr. McKee's father's status in life got to do with Mr. McKee's fitness to keep custody of this child?

MR. BROCK: My lord, this witness has given a great deal of evidence as to his activities and I intend to show and complete those activities.

HIS LORDSHIP: You are not talking about his activities, you are talking about his father's activities.

MR. BROCK: My lord, he was engaged with his father.

HIS LORDSHIP: He said he worked for his father, a boy of 15 years of age. That is what his evidence in chief was. We are not going into an investigation of Mr. McKee's father's business life, not in this case. If you think it reflects on his credibility, proceed,
10 otherwise confine yourself to the issues. That is what we want to deal with.

MR. BROCK: My lord, I do submit I am entitled to cross-examine this man as to the evidence he has given.

HIS LORDSHIP: Quite, I am not saying you are not, but now you are cross-examining him on something about his father that doesn't arise on examination-in-chief at all. All I am trying to do is keep this down to the issues we are dealing with.

MR. BROCK: My lord, this witness gave evidence he
20 worked for his father's furniture factory and I want to find out what happened to that factory.

HIS LORDSHIP: If you want to do that, that is quite all right.

MR. BROCK: Q. Isn't it true this furniture factory failed?
A. It is.

Q. Isn't it true also that the pay cheques of a number of the workmen were not paid?

A. I don't remember, Mr. Brock, that was nearly 40 years ago.

30 Q. That is the best evidence you can give us now?

A. I don't remember.

Q. Did the town sue your father and you for the return of that deed of land?

A. They certainly did not sue me. I was a boy, I wasn't even of age.

Q. Did they sue your father?

A. I don't know, I never heard of it.

Q. You went into insurance? A. Yes, sir.

Q. And politics? A. No, sir.

40 Q. Have you not been associated in politics?

A. No, not then.

Q. You are a republican? A. I am and I am proud of it.

HIS LORDSHIP: I am not interested in Mr. McKee's politics. I am interested in many things but I do not think it affects this issue.

MR. BROCK: My lord, I hope to show that it will.

HIS LORDSHIP: I have tried to indicate to you that I do want you to keep yourself to the issues we are trying. They are difficult enough.

MR. BROCK: Q. Do you remember the Newberry campaign for United States senator in Michigan?

A. I do.

Q. Do you remember the governor charged that he had
10 been offered the republican nomination as senator for \$150,000 and you were the man to see about it? Do you remember he charged you with that?

A. I remember there was some such charge laid.

Q. And the federal grand jury of the United States brought in an indictment against you and 29 others?

A. 135 others.

Q. They brought in an indictment?

A. They did, yes, sir.

Q. Against you and 29 others? A. And I was
20 acquitted, Mr. Brock.

Q. Yes, you were finally acquitted but during that trial you pleaded illness?

A. I did not, I was taken ill during the trial. I was sick with pneumonia during the trial which lasted some seven weeks. The trial went on during my absence and the jury acquitted me.

Q. Then, you have created the impression you were in the last war.

MR. LOCHEAD: I object to my friend making speeches
30 of this type.

HIS LORDSHIP: I think all he meant was that this witness gave evidence he finally was a first lieutenant in the chemical warfare division and had some activities with the Red Cross. That is what you were referring to?

MR. BROCK: Yes, my lord. You enlisted in the last war on October 31, 1918, isn't that true?

A. It is, but the reason was that I was at the head of the Red Cross and the government would not permit me to enlist before and the government asked the war depart-
40 ment to prevent my enlistment a year before.

Q. We intend to go further into the Red Cross. Now, while the war was on you were in the army 12 days?

A. I was in the army much longer than 12 days.

Q. While the war was on?

A. While the war was on, yes, sir.

HIS LORDSHIP: The war was still on after the armistice.

If that is what you mean, why not say so?

MR. BROCK: I asked, my lord, if the witness was in the army 12 days.

HIS LORDSHIP: The war was on after the 11th of November, 1918, there was not a state of peace for a considerable time after. I wish you would ask precisely what you mean.

MR. BROCK: You were in the fighting war for 12 days
10 in Michigan?

A. I wasn't in the fighting war at all. I was sent to a training camp.

Q. Right after the war you joined the Legion, is that not true? A. I was one of the organizers of the Legion.

Q. You became secretary of the Welfare Committee of the Michigan section of the Legion?

A. I did not.

Q. Did you ever become secretary?

20 A. I did not.

Q. You organized a movement to fight Bolshevism and Radicalism in the United States; is that not true?

A. I did not.

Q. Did you help organize it? A. I did not.

Q. Did you belong to the Committee?

A. I worked for the Committee; I did not belong to it.

Q. Were you not secretary? A. No, sir.

Q. Was it treasurer? A. No, sir.

30 Q. You resigned immediately after the Newberry investigations? A. No, sir.

Q. It was shortly after that? A. No, sir.

Q. Or was it before? A. No, sir.

Q. Now, then, during the war the State of Michigan created what was called the Michigan Patriotic Fund to receive donations for relief work of various kinds. Isn't that true after the first war?

MR. LOCHEAD: You said during; do you mean during or after?

40 MR. BROCK: During the war the State of Michigan created what was called the Michigan Patriotic Fund to receive subscriptions for relief work of various kinds, is that not true?

A. The County War Boards created such a fund.

Q. The State of Michigan did? A. No.

Q. It was created? A. I was secretary of the County War Boards.

Q. When the war ended \$3,220,000 were in this fund?

A. Yes, sir, approximately.

Q. And you became secretary of that fund?

A. I did not.

Q. You say that you did not become secretary?

A. I did.

Q. We will just look and see. We will go a bit further; in 1919 the Legislature of the State of Michigan passed a bill creating a commission as custodian of this fund. Do you remember that?

A. I don't remember, so I would not deny it.

Q. Now, did you become secretary of that?

A. I don't think I was, I was a member of that commission.

Q. You were a member of the commission - what do you call it again?

A. The Michigan Community Council Commission.

HIS LORDSHIP: Q. They were custodians of this patriotic fund, is that it?

MR. BROCK: It was custodian of this patriotic fund.

Q. Now, when were you on that commission?

A. I was one of some 15 or 20 members of that commission.

Q. Will you try to remember how many were on that commission?

A. I think it was 21.

Q. Now, did you draft that bill creating this commission?

A. No, I did not.

Q. You did not? A. I did not.

30 Q. Did you assist to draft it?

A. I did not.

Q. Did you help lobby it through the legislature?

A. I did not.

Q. Now, then, did the legislature in the year 1921---

MR. LOCHEAD: Which legislature?

MR. BROCK: The legislature of the State of Michigan appoint a joint committee to investigate the affairs of this commission?

A. They did.

40 Q. Did they find that vouchers were missing?

A. They did not.

Q. You say they did not? A. They did not.

Q. Did they say they had been stolen in three robberies? A. They did not.

Q. Isn't it true that the legislature took this fund and turned it over to the Michigan department of the American Legion, is that not true?

A. The legislature turned it over to three trustees for the American Legion, after the investigation.

Q. After transferring this money to the American legion, did you draft that bill?

A. I did not.

Q. Did you assist to lobby it through the legislature? A. I did not.

10 Q. You say you did not -- you were secretary of the American Legion? A. I was not.

Q. You were secretary of this Michigan department of the American Legion?

A. I never was.

Q. Were you secretary-treasurer handling this fund?

A. I was not.

Q. Now, in December of 1925, wasn't this fund brought up in the state legislature of Michigan and Mr. Deland was asked for a statement of the welfare funds?

A. He was not.

20 Q. You say he was not? A. No, I say not.

Q. Did Mr. Deland say in the legislature that he had asked you for a statement, for an audited statement of the fund? A. Not to my knowledge.

Q. Not to your knowledge? A. No.

Q. Did Deland request and demand a statement from you? A. He did not, I was just one of three trustees.

Q. Did he demand a statement from the three trustees?

A. He did not.

30 Q. Did anyone from the legislature?

A. They did not.

Q. Now, then, did the State put in their own auditors and make an audit of these welfare committee books?

Did they? A. I believe, Mr. Brock, that we, the trustees, requested that an audit be made.

Q. I am asking you, did the state request that, Mr. McKee?

A. At our request, Mr. Brock.

Q. You say at your request? A. Yes, Mr. Brock.

40 Q. Isn't it true this welfare committee of which you were one of three, had not only these funds from the Patriotic Fund but they also had \$700,000 from the State of Michigan?

A. To carry on all the welfare activities of the American Legion, to carry on work.

Q. When that audited statement was prepared how much money was left?

A. I don't remember, Mr. Brock.

Q. If I remind you it was \$12,000?

A. I don't remember. Every penny was accounted for and carried on for the work it was intended.

Q. It was accounted for in this way --

MR. LOCHEAD: Do not give evidence; ask him questions.

MR. BROCK: I am going to, don't worry.

Q. Now, then, the committee spent, isn't it true
10 that the committee spent \$210,611 to distribute \$16,122
to the needy? Is not that true?

A. That isn't true, Mr. Brock.

Q. Do you remember when this was in the papers in
Michigan? A. I didn't pay much attention to the
papers in Michigan, Mr. Brock, I did not and I don't
now.

Q. Did you pay much attention to the money in this
welfare fund? A. I had nothing to do with handling
that money. I was merely one of the three trustees.

20 Q. Now, perhaps you will tell us whether that
\$210,000 odd was spend to distribute \$16,000 to the
needy? A. It was not.

Q. Now, I refer you to a photostatic copy of the
Detroit News dated February 26th, 1926, and if, my lord,
there is any denial, we will have to produce the Detroit
News.

HIS LORDSHIP: How can you produce it? Surely this
is collateral to the issues in this case. You might
as well understand what you are getting into; it is
30 a well-recognized rule of evidence that you have to take
the witness's answer. This is a collateral issue.

MR. BROCK: My lord, I submit it is not a collateral
issue.

HIS LORDSHIP: You cannot say this man's activities
in 1926, before he was married, before he had any of
these children you are talking about, you cannot go
back and re-open the evidence of things in the past.
This evidence is not admissible under our own ruling.
I am warning you, you may think it is and you can just
40 go ahead. I do not want you to be taken by surprise,
that is all.

MR. BROCK: I will just ask this one question, and
I will ask this witness, and I am asking for your lord-
ship's ruling on it before I put it to the witness. I
am asking the witness if the matters appearing in the
Detroit News of February 22, 1926, are true.

HIS LORDSHIP: Mr. Brock, in all seriousness, how
how can anyone answer that question unless they are
shown it.

MR. BROCK: I am going to read it to him.

HIS LORDSHIP: As you framed the question I do not
see how anybody could answer it, quite frankly.

MR. BROCK: Q. Mr. McKee, I am going to read to you
from a photostatic copy of the Detroit News dated
10 February 22nd, 1926.

MR. LOCHEAD: My lord, has my friend somebody here
to testify as to the accuracy of this photostatic copy?

HIS LORDSHIP: I suppose he can ask the witness if
it was true.

MR. BROCK: This is a photostatic copy of the Detroit
News.

MR. LOCHEAD: What is the date, please?

MR. BROCK: February 22nd, 1926. My lord, I am ask-
ing this question because this witness has given a great
20 deal of evidence about himself. I will just read the
headline first and then go on.

---(Mr. Brock reads headline above referred to.)

MR. BROCK: Q. Is that true?

A. The answer is no.

Q. You say it is not true? A. I do.

Q. What was your answer when I asked you if the
governor had charged that he was asked for \$150,000 for
30 the appointment for a nomination as Republican senator?

A. My answer was I did not know.

Q. My lord, I am going to ask the witness if this
statement by the Detroit News is true.

HIS LORDSHIP: Let us have the date, please.

MR. BROCK: It is dated Sault Ste. Marie, Michigan,
September 20th.

HIS LORDSHIP: Just a moment, what was the date, let
us have a little more cohesion about this. What is the
date?

40 MR. BROCK: September 20, 1918.

My purpose, my lord, is that this witness has given
evidence ---

HIS LORDSHIP: I appreciate your purpose, Mr. Brock,
and I think you are within your rights. I just want to
get it down.

MR. BROCK: Did the governor charge you as stated in
that newspaper article?

A. The governor was a defeated candidate and I believe he made some statements of that kind -- they were sour grapes.

Q. Following that was the Newberry investigation held?

A. Two years afterwards.

Q. And you were included? A. I was included.

Q. What were you charged with?

A. With 133 others.

10 HIS LORDSHIP: Is the Detroit News a political paper, Mr. Brock?

MR. BROCK: I know nothing about it, I am just asking. I do not know whether it is a Republican or Democratic paper or what it is, my lord. I understand from Mr. Pulfer that the News is a Republican paper.

HIS LORDSHIP: This was a sort of civil war.

MR. BROCK: Now, then, Mr. McKee, do you know Max J. Carabel?

A. I do.

20 Q. He was secretary of the Erie Railroad, was he not? A. He was not.

Q. You say he was not. In any event, now I am going to read an article from the Detroit News of October 18, 1926, and I want to ask you is it true, is it a true statement?

A. It is not.

Q. What are the facts, do you know this woman, Mrs. Carabel?

A. I do.

Q. You do? A. Yes, sir.

Q. Do you know that you were named as co-defendant?

30 A. I do not.

Q. Is this the first time that you have heard of it?

A. That I was named as a co-respondent, yes, sir.

Q. You say this is the first time?

A. I do, that I was named as a co-respondent.

Q. You only read the Republican papers in Detroit?

MR. LOCHEAD: Never mind, Mr. Brock, he has denied it three times now.

MR. BROCK: Now, I believe you told us this morning that you were in the Brotherhood of American Yeomen?

40 What is the correct name of that?

A. The Yeomen Mutual Life Insurance Company. It was changed to the American Mutual Life Insurance Association.

Q. Is it still in existence? A. As the American Mutual Life Insurance Company.

Q. Were you and three other directors sued for voting

themselves enormous salaries far beyond your worth and capacity? A. We were not.

Q. You were not? A. We were not.

Q. And also that you had put out large sums in pretended settlement of old age benefits? Were you sued for that? A. We were not.

Q. And with this same suit --

MR. LOCHEAD: There is no suit so far.

10 MR. BROCK: Q. Now, Mr. McKee, I show you the Detroit News dated April 24th, 1926. This is in your own bailiwick back in Iowa. Is that true?

A. It is not.

Q. Mr. McKee, did you make a settlement of any case with the Mutual Insurance Company, did you make a settlement at any time of the action?

HIS LORDSHIP: What action are you talking about? Please ask questions that can be answered.

MR. BROCK: That is with the insurance company?

20 A. I did not.

Q. Now, you are not now chairman of the Child Welfare Committee we have talked about, are you?

A. I served my term and retired some 20 years ago.

Q. I am showing you a copy of the Detroit News of September 22nd, 1927. Is it true that the Committee's report was brought in showing they were dissatisfied with your conduct?

A. I wasn't there, Mr. Brock.

30 Q. You say you don't know? A. I say I wasn't there, Mr. Brock.

Q. Do you deny it?

HIS LORDSHIP: Mr. Brock, he has told you he wasn't there. If you want to ask him further questions please do so.

MR. BROCK: Do you know if that is true or untrue?

MR. LOCHEAD: If what is true?

MR. BROCK: Is it true that the Committee brought in a report that they were dissatisfied with your conduct?

40 A. I wasn't there, Mr. Brock, I didn't hear any of the Committee's report.

Q. It is about that time that you retired, is that true? A. About two years afterwards, Mr. Brock.

Q. You say it was about two years afterwards?

A. It was two years afterwards.

HIS LORDSHIP: Q. Were you under any pressure to retire?

A. I was not, I finished my term, your lordship.

MR. BROCK: Now, then, Mr. McKee, do you remember when this action was first brought in California in 1942?

A. You mean the divorce action?

Q. Yes? A. I do.

Q. And at that time Mr. Haumesch and another attorney from Los Angeles acted for Mrs. McKee, did they not? A. You mean Mr. Solomon?

Q. Mr Haumesch and Mr. Solomon? A. They did.

10 Q Now, during the course of that trial Mr. Haumesch and Mr. Solomon retired from the case, did they not?

A. Yes, Mrs. McKee dismissed them.

Q. By agreement between your counsel and they, how much was paid to Mr. Haumesch?

A. The amount that was approved by the trial judge, Thurman Clarke.

Q. How much was that? A. I think it was \$1250, I would have to refresh my recollection but it was the amount the trial judge approved, Mr. Brock.

20 HIS LORDSHIP: I take it in an action of that sort you are responsible for your wife's costs? A. Yes.

MR. LOCHEAD: Under California procedure?

A. Yes.

MR. BROCK: In 1942 when the case was finally determined how much were you asked to pay to Mr. Quesnel?

A. The judge allowed \$200, Mr. Brock.

30 Q. Now, between that time, that is the end of this action in 1942, and throughout these motions that were made and the trials that were had, until June 28th, I think it was, 1945, did you pay any costs at all to Mrs. McKee?

A. The court did not direct me to.

Q. I am asking you if you paid any costs at all?

A. I didn't, because the court didn't direct me to.

Q. Were you asked to? A. I was not, there were no costs.

Q. Did Mrs. McKee ask you to pay it?

MR. LOCHEAD: My lord, we are getting so confused I don't know whether we are in California or Wisconsin.

40 HIS LORDSHIP: I think we are in California. I am trying to relate this to something in this case, Mr. Brock. Are you trying to attack his credibility?

MR. BROCK: No, there is an inference he has paid this \$10,000 and I am going to prove that he has not.

HIS LORDSHIP: I see.

MR. LOCHEAD: The \$10,000 order in February of this

year. We will admit quite frankly that has not been paid.

MR. BROCK: I should be allowed to ask the questions.

HIS LORDSHIP: You can ask any number of questions if you are entitled to. I do not appreciate the value of the evidence you are bringing out. I do not want you to be misled; you are still entitled to bring it out. On the other hand, I want you to know the effect
10 it is having on me because I am not able to connect it with anything at the moment. If I do not tell you that, I think you are under some misapprehension. I do not want you to be. You referred to the order in February of this year and Mr. Lohead says he admits it.

MR. BROCK: My lord, I would like to bring out except for \$500 ordered by the judgment of August 1, 1945, this witness has paid nothing to his wife.

HIS LORDSHIP: In the way of costs?

MR. BROCK: Yes, my lord.

20 HIS LORDSHIP: Admitting that, where does that get you or me in considering the issues in this case? I am asking you a simple question, what is the relevancy of that evidence?

MR. BROCK: My lord, it relates to the impression I thought was created that this \$10,000 had been paid.

HIS LORDSHIP: If it is of any assistance to you, I didn't get that impression. I didn't think it had been paid.

30 MR. BROCK: My lord, it was in the papers that this \$10,000 had been paid.

HIS LORDSHIP: Oh, well, I can assure you, Mr. Brock, that I am hoping to decide this case on the evidence and not on press reports of it, and I have had no such impression.

MR. BROCK: My lord, if it did get into the evidence I would like to dispel it.

HIS LORDSHIP: You can do anything you like. Now, you go ahead.

40 MR. LOCHEAD: My lord, I do not know whether my friend intends to pursue this \$10,000 point at the moment. I am quite prepared to admit the money has not been paid, but if my friend leaves the point I would not like the record to be left as indicating it had been paid.

HIS LORDSHIP: I do not think there is anything in the evidence that suggests it was paid at any time.

MR. LOCHEAD: Both Mr. McKee and myself on one occasion, I remember, instructed the Press it had not been paid.

HIS LORDSHIP: I don't know anything about that, but I certainly know there is nothing in the evidence that I can recollect that suggests it was paid. I did not realize he had paid \$500. You can proceed, Mr. Brock.

10 MR. BROCK: Q. Now then, with respect first of all to the \$1250 that was paid to Mr. Haumesch. Was Mrs. McKee consulted at all with regard to that?

A. That was by agreement of counsel approved by the trial judge.

Q. And what counsel? A. All I know was that I was directed to pay \$1250 which I paid.

Q. You told us it was by agreement of counsel, what counsel do you mean?

A. By agreement of Mrs. McKee's counsel and my counsel and approved by the trial judge.

20 Q. Do you mean Mr. Haumesch?

A. Mr. Haumesch, Mr. Solomon and Mr. Scott.

Q. Mr. Scott was your attorney and Mr. Solomon and Mr. Haumesch were the retiring attorneys of Mrs. McKee, is that right? A. They were.

Q. And by an agreement between your counsel and the retiring counsel of Mrs. McKee that was arranged, and you say it was approved by the judge?

A. At the direction of the judge.

30 HIS LORDSHIP: If I am not mistaken it is in the order that was filed.

MR. BROCK: My lord, if I remember correctly I think it was just \$200.

MR. LOCHEAD: My lord, with respect I think the \$1250 was not in the order. The \$200 to Quesnel is in the order; it is Exhibit 22.

HIS LORDSHIP: There is a clause covering counsel fees in respect of \$800 in the property settlement. You are quite right, the only sum mentioned in the formal judgment is \$200.

40 MR. BROCK: Then, when the Wisconsin proceedings were dismissed with prejudice, did you pay any costs or anything of that nature to Mrs. McKee or her counsel?

A. I was not directed to do so and I did not.

Q. And towards the costs of the appeal subsequently taken after the order of August 1st, 1945, did you pay any costs?

A. I paid \$500 as directed by the Court.

Q. Towards the end of the appeal did you pay any of the costs? A. That was for the appeal.

Q. You say that was for the appeal?

A. That was the order that was directed, \$500 costs on appeal.

Q. Isn't it true that order directed you to pay \$500 costs to Mrs. McKee as a result of the trial?

10 A. That was an additional \$500. I paid two \$500, \$500 at the trial and \$500 as directed on the appeal.

Q. That is all you paid? A. I have paid everything I was directed to pay except the \$10,000.

Q. I am asking you if that is all you paid?

A. It is, Mr. Brock.

---The Court was then adjourned until 10.30 a.m. on October 2nd, 1947.

20 ---The Court resumed at 10.30 o'clock a.m. on October 2nd, 1947.

MARK T. McKEE, having previously been sworn, resumed the stand.

---CROSS-EXAMINATION BY MR. BROCK CONTINUED:

30 Q. Mr. McKee, do you remember the trial of the action for divorce and custody of Terry in the Superior Court of the State of California in the summer of 1942?

A. No, November of 1942.

Q. In November, 1942? A. I do.

Q. Were you present in person at that trial?

A. I was.

Q. And were you represented by counsel?

A. I was.

Q. And did you give evidence at that trial?

40 A. I did.

Q. And Terry, the infant in these proceedings, was in the State of California at the time?

A. He was.

Q. As a matter of fact, Terry had lived in the State of California from the time of his birth until the judgment in that action, is that not true?

A. It is.

Q. Now, do you remember the trial of a motion before the same Superior Court in California to fix the three months period in the summer time and that motion was held on June 10, 1943. Do you remember that?

A. I do.

Q. And you were present in person at that hearing, were you not? A. I was.

10 Q. And you were represented by counsel?

A. I was.

Q. And you gave evidence at the hearing of that motion, did you not? A. I think I did.

Q. And you had added in that judgment, did you not, that Mrs. McKee must keep Terry within the State of California and within the County of Los Angeles?

HIS LORDSHIP: Mr. Brock, the Court made the judgment.

MR. BROCK: Q. You moved that the Court make that judgment? A. I did not, that was the judgment
20 of the Court.

Q. I understand it was the judgment of the Court, but it was at your instigation that it was made?

A. It was the discretion of the Court.

Q. I realize it was the discretion of the Court whether it made the order that you asked for, but you did ask for that order?

A. The Court insisted on it, Mr. Brock.

Q. In your affidavit in support of the motion did you ask for an order that the child be kept in California?

30 A. I cannot recollect.

HIS LORDSHIP: Was it in the state or the county; it was in the county, wasn't it?

A. It was in Los Angeles County in the State of California.

Q. As I understand it, I want to be clear on this, that judgment limited that when he was with his mother she was required to keep him within the County of Los Angeles unless the Court otherwise ordered. Is that right?

40 A. Yes, my lord.

MR. BROCK: Q. I think on one occasion Mrs. McKee said he could be moved out of the county? A. Yes.

Q. On one occasion Mrs. McKee said she wished to move Terry out of the county and she could not because of that, is that right? A. Yes.

Q. Did you ask the Court to include that provision in its order?

A. As I remember it, the Court insisted on it.

Q. I asked you if you asked the Court to put it in?

A. I don't think I did, I don't recollect.

Q. It is in the order?

A. The Court insisted on many things in that order, Mr. Brock.

MR. BROCK: Q. Well, then, do you remember the trial of the motion for modification of the custody of Terry
10 before the Superior Court of the State of California held on September 22nd, 1943?

A. I do.

Q. And were you present in person at that hearing?

A. I was.

Q. Were you represented by attorneys?

A. I was.

HIS LORDSHIP: Now, I do not know just what the purpose of this is, Mr. Brock.

MR. BROCK: My lord, I would like to put in as much
20 of the evidence with regard to this as I can. He said very frankly yesterday he commenced this final action in California on the advice of his counsel there and I would like to show the whole procedure throughout.

HIS LORDSHIP: You go ahead.

MR. LOCHEAD: My lord, may I say I will not suggest otherwise.

HIS LORDSHIP: I wouldn't think so, those are the facts.

MR. LOCHEAD: Yes, my lord.

MR. BROCK: Do you remember the hearing of the motion
30 brought by yourself before the Superior Court of California on September 12, 1944?

A. I do.

Q. And you were represented by counsel and were present in person?

A. I was.

Q. Now, then, were the proceedings that had been taken in Wisconsin considered at that hearing?

MR. LOCHEAD: At which hearing?

MR. BROCK: At the hearing of September 12, 1944.

HIS LORDSHIP: Did you say 1943 or 1944?

MR. BROCK: 1944.

MR. LOCHEAD: My lord, I do not like to interrupt but I am afraid my friend is quite unintentionally misleading the witness. I know of no proceedings in 1944.

HIS LORDSHIP: You check it, Mr. Brock, and make sure.

MR. LOCHEAD: I am not denying it, my lord, I am

simply saying if there were such proceedings I am not aware of them.

HIS LORDSHIP: No, that is right.

MR. BROCK: I am pretty sure there was, my lord. I took it out of the appeal book.

HIS LORDSHIP: You may as well check it while you are at it and clear it up as we go along.

MR. BROCK: It was the 11th day of September, 1944,
10 or the 12th day of September, 1944. Here is an order in the appeal book, my lord.

HIS LORDSHIP: If you have a transcript of the proceedings why don't you consult with Mr. Lohead now?

MR. LOHEAD: Apparently there was, my lord.

MR. BROCK: Now, will you answer that question?

A. Are you asking about September, 1944 -- did you ask me if I was present at that hearing? I thought you were referring to 1943 and we had another hearing in 1944. In 1944 I was only present a portion of the time.

20 Q. You were only there part of the time?

A. I was only there part of the time.

Q. And do you know if the Wisconsin proceedings were considered by the Court in California on that occasion?

A. No, sir, I do not.

Q. You say you don't know? A. Not to my knowledge, they might have been but I don't know.

Q. They might have been? A. They might have been, I couldn't say.

Q. Isn't it true that you wrote a letter to Mr. Michael Levin telling him that you knew that the Wisconsin proceedings had been considered at that hearing?

MR. LOHEAD: My lord, I object to any reference to that letter. At that time Mr. Michael Levin was this witness's attorney in Wisconsin and this witness can claim privilege for any communications at that time because the litigation was in process.

HIS LORDSHIP: How can you cross-examine on that communication?

MR. BROCK: My lord, this is a letter to Mr. Levin
40 of Wisconsin who was not interested in the California proceedings. I might say, my lord, all the proceedings filed in the Wisconsin action indicate that Mr. Levin was Mr. McKee's attorney in that action.

HIS LORDSHIP: Was he, Mr. McKee?

A. He was.

MR. BROCK: Now, Mr. McKee, will you tell me whether you knew that the Wisconsin proceedings had been before

the Superior Court of California before the Honourable Judge Poast in September, 1944?

A. I cannot be sure.

Q. You still say you cannot be sure?

A. I still say I cannot be sure.

Q. And in spite of that letter I referred you to?

A. The answer is I cannot be sure, Mr. Brock.

Q. In spite of reference to this letter?

10 A. Yes.

MR. LOCHEAD: My lord, I object to any reference to that letter.

MR. BROCK: I am not showing it, my lord.

MR. LOCHEAD: I object to any letter between this witness and his attorney unless the witness can show that privilege has been waived.

HIS LORDSHIP: Mr. Brock, are you seriously suggesting that communication is not privileged? If you are, I would like to hear your argument on it.

20 MR. BROCK: My lord, I submit it is not privileged in that it is written to a lawyer who was not a lawyer in the California proceedings.

HIS LORDSHIP: You cannot keep these things in separate compartments.

MR. BROCK: At that hearing was that letter read to the Court?

MR. LOCHEAD: My lord, what letter?

MR. BROCK: Your letter.

30 HIS LORDSHIP: I suppose he can ask whether it was read or not.

MR. BROCK: I will just refresh your memory. You remember the evidence taken on this hearing, do you?

A. I don't remember all of it, I was absent part of the time from the hearing.

Q. Mr. McKee, I will read to you from the transcript of the evidence.

HIS LORDSHIP: If you are going to read the letter I am telling you you cannot do it.

40 MR. BROCK: I won't read the letter, my lord. I will show you a letter, Mr. McKee, dated Chicago, Illinois, December 11, 1944, to Michael Levin, Attorney-at-law, which is purportedly signed by you.

Now, does that refresh your memory of these proceedings in the hearing of September 12, 1944, that the Wisconsin proceedings were considered?

A. It does not, Mr. Brock.

Q. You still say it does not?

A. It does not, Mr. Brock.

Q. Now, do you remember the trial before the Superior Court of the State of California heard by the Honourable Rueben C. Schmitt in June, 1945?

A. I do.

Q. Were those proceedings initiated by you?

A. They were.

Q. That is, you had made an affidavit, and was an
10 order taken out so that these proceedings could be had?

A. Yes, sir.

MR. LOCHEAD: An order?

MR. BROCK: Yes, an order to show cause.

MR. LOCHEAD: Oh.

MR. BROCK: And at that time you had custody of Terry
for nine months? A. I had.

Q. And Evelyn McKee had custody for three months?

A. No, Mr. Brock, the original order gave me custody
and control and Mrs. McKee had him for three months in
20 the summer time, but there was nothing in the original
order about custody for her for three months. The order
gave me full custody but stated he should spend three
months in the summer time with his mother in California
but nothing was said about custody for her for three
months.

HIS LORDSHIP: I think orders have to speak for them-
selves. I do not think either your opinion or Mrs.
McKee's opinion of the order helps me.

MR. BROCK: The order will speak for itself, my lord,
30 but I submit so does the answer speak for itself.

Now, then, your motion at that time was for full
custody, was it not, is that true?

A. I don't remember the wording of the motion that
was prepared by my attorney. I do not remember the exact
wording.

Q. I am not asking you whether you remember the exact
wording. I am asking you if that was what your motion
was for.

HIS LORDSHIP: Were you asking twelve months' custody?

40 A. I was asking twelve months' custody.

MR. BROCK: That is, you were going to try to take
away the three months which Mrs. McKee had?

A. Just as she had tried to take away the nine months
I had, yes, sir.

Q. That trial lasted for five days or so, did it
not? A. I think approximately so.

Q. And you were present in person at that trial most of the time? A. Yes.

Q. And you were represented by counsel?

A. I was.

Q. And you gave evidence at that trial?

A. I did.

Q. And the complaint filed by Mrs. McKee's attorneys, her Wisconsin attorneys in the Wisconsin proceedings, 10 were an exhibit at that trial, were they not?

A. I cannot recollect.

Q. Well, then, perhaps they may have been?

A. They may have been, I just cannot be positive.

Q. Now, then, Mr. McKee, can you recollect whether the complaint filed in the Wisconsin proceedings by Mrs. McKee's attorneys were offered as an exhibit at the trial in California in June, 1945?

A. It might have been, Mr. Brock, I don't recollect.

Q. That is the best answer you can give me?

20 A. Yes.

HIS LORDSHIP: Supposing they were, what is the result of that?

MR. BROCK: My lord, I submit then they are adjudicated upon by a court of competent jurisdiction.

HIS LORDSHIP: But I have to take this decree in the California Court on its face and it purports to be a court of competent jurisdiction and if it is a valid decree at all that is a pure matter of law. If it is a valid decree then I have to take it as one of the 30 factors which I have to consider. All I am interested in is if it was founded on a proper basis. You do not have to go behind that decree.

MR. BROCK: Yes.

HIS LORDSHIP: Why are you going behind it?

MR. BROCK: My lord, I am going behind it just for this purpose; that this complaint has been filed as an exhibit here and I am showing the court in California had considered this complaint.

HIS LORDSHIP: That is the very thing I do not think 40 I have to worry about. What I do have to worry about is whether it is a valid decree. That is the point I am concerned about.

MR. BROCK: But, my lord, I do consider that I should prove that on two occasions in the State of California these Wisconsin proceedings had been considered and adjudicated upon.

HIS LORDSHIP: If you think it is of any assistance to you, go on.

MR. BROCK: If your lordship will bear with me just a little.

HIS LORDSHIP: I will bear with you.

MR. BROCK: And then the depositions of Mrs. McKee taken in the Wisconsin proceedings were also considered by the Superior Court of the State of California in June,
10 1945, is that true?

A. I do not know that they were, Mr. Brock.

Q. You know they were read by the judge, you were present, were you not, a portion of the time?

A. Just a portion of the time.

Q. And you do not remember whether the judge considered and read those affidavits?

A. I don't know that he did.

Q. You didn't hear that in Court? A. I don't remember that it was done.

20 Q. Then your best answer to that is that you do not remember? A. That is right, I have no recollection of it.

Q. And you were present in Court most of the time?

A. Part of the time I was absent because of illness.

HIS LORDSHIP: As I understand Mr. McKee's evidence, he just does not remember.

THE WITNESS: That is it.

MR. BROCK: Is that what you say, Mr. McKee, that
30 you don't remember?

A. It is, Mr. Brock.

Q. Now, near the conclusion of that trial, Mr. McKee, before the Honourable Judge Schmitt, did you undertake with the presiding judge not to attempt to circumvent any order that the Court might make because of the fact that you were not required to bring the child to California?

A. I don't remember such an undertaking.

Q. You don't remember an undertaking?

A. I don't remember an undertaking.

40 Q. I will read from page 102 of the reporter's transcript of the hearing on the motion held in June, 1945:

---(Mr. Lohead read the above evidence to the Court.)

A. I do not remember that.

Q. You say you do not remember?

not copied in the record.

A. I say that, Mr. Brock, that I do not remember that.

Q. And when you gave that undertaking were you under oath?

MR. LOCHEAD: He doesn't remember so how can you ask that?

Q. Do you remember that? Do you remember now having undertaken with the Honourable Judge Reuben Schmitt that
10 you would not try to circumvent any order he might make by reason of the fact he had not required you to bring the child to California?

MR. LOCHEAD: My lord, that is a misleading question.

MR. BROCK: I will re-word it.

MR. LOCHEAD: The order was not made until August 1st, 1945, and these proceedings are in June, 1945.

HIS LORDSHIP: Is it as your counsel says that the order was not made until August 1st, 1945?

A. I believe that is correct, yes, sir.

20 MR. BROCK: Q. Now, can you remember that you gave that undertaking during the proceedings in California in June, 1945, to the Honourable Judge Rueben Schmitt?

A. Mr. Brock, I do not remember giving an undertaking.

Q. Now, I show you Exhibit 2 in these proceedings, that is a formal judgment taken as a result of a trial held in June, 1945, and that is an exemplified copy of it?
A. Yes, sir.

Q. Now, in December, 1944, did you write to Mr. Michael Levin telling him --

30 MR. LOCHEAD: My lord, I object to this letter. At that time Mr. Levin was still Mr. McKee's Wisconsin attorney and unless my friend can establish that the privilege was waived, I object to any reference to that letter.

HIS LORDSHIP: I agree with that objection. Mr. Brock, you know very well the rules in that respect. You have no right to produce it unless you lay a proper foundation. I do not think that you are advancing the case by continually transgressing the rules of evidence
40 and you are continually doing so.

MR. BROCK: Q. Now, then, Mr. McKee, did you take an appeal from the judgment of the Superior Court of the State of California dated August 1st, 1945?

A. I did.

Q. And that was to the District of Appeal of the State of California?
A. It was.

Q. And what was the result of that appeal that you

took to the District Court of Appeal of the State of California; was it confirmed?

A. By a two to one decision.

Q. The judgment of Judge Reuben Schmitt was confirmed?

A. By a two to one decision.

Q. Do you remember when that judgment of the District Court of Appeal of the State of California was rendered?

A. I don't remember the exact date, Mr. Brock.

10 Q. You don't remember? A. I don't remember the exact date, I was in Michigan, I was not in California.

Q. Then you made an application, no, you petitioned the District Court of Appeal for a re-hearing?

A. I believe my attorneys did.

Q. Did you give them instructions to do it?

A. Yes, sir.

Q. And that petition for a re-hearing was denied, was it not? A. I believe it was, yes, sir.

20 Q. That petition for a re-hearing was denied on November 22nd, 1946, was it not?

A. I don't know the exact date, Mr. Brock.

Q. You don't know? A. I don't know the exact date. I know it was denied but I don't know the date, I was in Michigan, not in California.

Q. Then following that petition for a re-hearing you made an application to the Supreme Court of the State of California for a hearing, did you not?

A. My attorneys did for me.

30 Q. Did you give your attorneys instructions to do that? A. I did, yes, sir.

Q. And was that application for a re-hearing denied?

A. I believe it was, yes, sir.

Q. The application to the Supreme Court of the State of California was denied? A. Yes, sir.

Q. May I show you Exhibit 6. I show you Exhibit 6 in these proceedings? A. This is not addressed to me, this is a postcard and I did not receive it.

40 Q. Exhibit 6 is a notice to the attorneys for Mrs. McKee that the application for a hearing to the Supreme Court of the State of California was denied. I refer you to Exhibit 6, when was the application to the Supreme Court of California denied?

A. The remitter was filed on January 1st, 1947.

Q. I have not asked you when the remitter was sent down? A. You merely wish me to read from this card?

Q. I am asking you when your application to the

Supreme Court of the State of California was denied?

A. I can merely read it.

Q. Just answer? A. I am trying to answer your question. I can read this card to you.

HIS LORDSHIP: Mr. Brock, if you wouldn't interrupt him for a moment I think you would get some answer.

THE WITNESS: I am reading this card. It is dated San Francisco, December 23, 1946.

10 MR. BROCK: Q. Now, will you answer? A. I am answering the question and I am reading this. This is the only knowledge that I have of this card. My information was the remitter was filed and became effective on January 13, 1947.

Q. Now, will you answer the question. The question is, when was the application to the Supreme Court of the State of California for a hearing denied?

HIS LORDSHIP: Does it make the slightest difference as long as it was denied. It was denied, Mr. McKee?

20 A. It was denied, yes, sir.

MR. BROCK: I think it has a little more probative value to it than that, my lord.

HIS LORDSHIP: If it has, go ahead. It seems to me you are getting all you wanted. Go ahead if you want more.

MR. BROCK: Now, this is the final appeal that you can take from the judgment of the Honourable Reuben Schmitt dated August 1st, 1945, is that true?

A. I believe it is, yes, sir.

30 Q. And then I show you Exhibit 3 which is a property settlement agreement?

A. Yes, sir.

Q. In that property settlement agreement did you undertake, did you and Mrs. McKee undertake not to remove Terry out of the United States of America?

A. The property settlement agreement so stated.

Q. You remember that, do you, Mr. McKee?

A. I do.

Q. Did you remember it in December, 1946?

40 A. My counsel advised me ---

Q. I am asking you if in December, 1946, you remembered about the property settlement agreement?

A. According to the advice of my counsel ---

Q. I am not asking you what your counsel advised you, I am asking you if you remembered?

A. I fully remember every part of the property settlement.

Q. Now then, it appears a few days after the judgment of the highest court in California, and remembering the property settlement agreement and the terms with respect to taking Terry out of the United States, you brought Terry to Canada?

MR. LOCHEAD: My lord, I object to that question.

MR. BROCK: Q. Did you not?

MR. LOCHEAD: My lord, I object to that question.

10 HIS LORDSHIP: I think it is probably true, you are not denying it?

MR. LOCHEAD: My friend has not established that, my lord. There has been no reference to anything to indicate that this witness found out about this appeal. The only thing is the card from some court official to Mrs. McKee's attorneys out there.

20 HIS LORDSHIP: Mr. Brock, you can go into it in greater detail and find out when he learned what he did. I think that is the proper way, really. Forget about the card and find out when he learned of the judgment of the court in California.

MR. BROCK: When did you first learn of the decision? I want you to remember this, it appears your memory slips at times, but when did you first hear of the decision of the Supreme Court of the State of California, and I do not mean that remitter, I mean when did you first hear of it?

30 A. In the Detroit News of December 24 there was an item to the effect the Supreme Court of California had denied the petition.

Q. You knew of it on December 24?

40 A. Wait a minute, Mr. Brock, I couldn't credit it and I called my counsel by telephone in California and asked him if it was true. He said that no word had yet been received but if it was true that it would not become effective until a remitter was filed with the Superior Court which would not be in the usual practice until some time about the middle of January; it wasn't effective until that time, Judge Schmitt's order would not become effective until that time.

Q. You hurriedly got Terry out of the State of Michigan into Canada before the remitter came down?

A. No, Mr. Brock.

Q. You brought him up here on the 26th?

A. I arrived on the 26th.

Q. Then it is true within two days after you learned of it.

MR. LOCHEAD: No, no, he didn't say he learned of it, he read a Detroit News item and his counsel advised him he had not heard anything about it.

HIS LORDSHIP: Mr. Brock, it is quite obvious what was happening.

MR. BROCK: Q. Now, before December, 1946, had Terry ever been in Canada?

A. Terry had passed through Canada.

10 Q. You mean in the air? A. He had passed through. He had passed through in the air and he had also passed through going from New York to Port Austin by train.

HIS LORDSHIP: You will be confusing him with the boy on the flying trapeze presently.

MR. BROCK: Now, on January 4th were you substituted as attorney on the record for the State of California in place of Mr. Joseph Scott?

A. I didn't know that I was but I might have been.

20 Q. You must sign for that, must you not?

MR. LOCHEAD: Ask him if he did sign.

MR. BROCK: Q. I am asking you if you must sign to have a change of attorney, is that correct?

A. I am not positive.

Q. That is another thing you don't remember?

A. It may be so.

HIS LORDSHIP: He didn't say he didn't remember, he said he wasn't positive.

MR. BROCK: Q. Now, when you brought the child to 30 Canada, to Ontario, on December 26, 1946, did you obtain the consent of Mrs. Evelyn McKee?

A. I did not.

Q. Now, then, you brought Terry to Kitchener on December 26, 1946, did you not?

A. I did, yes, sir.

Q. And you took him to the home of Mrs. Ament at 40 Hinds Avenue there? A. I did not at that time.

Q. You didn't take him there, where did you take 40 him? A. Terry and Julian and myself were invited over for the Christmas holidays to my cousin's, Moses Steever's.

Q. First, then, you took him to Moses Steever's?

A. No, I didn't take him to Moses Steever's.

Q. Where did you take him? A. To the Walper house, Mr. Brock.

Q. You took him to the Walper House first?

A. Yes.

Q. Then where did you take him, to Mrs. Stever's?

A. We went up to Lynwood.

Q. I am asking you when you took him to Mrs. Stever's? A. He is trying to answer that if you will give him a chance.

THE WITNESS: We went to Lynwood, and we went to Mr. and Mrs. John Kenny's where we had the best Christmas
10 dinner.

Q. Now, that you have got that in, will you answer my question. When did you take him to the Ament's?

A. You asked when I took him to Stever's.

Q. I meant the Ament's. A. About three days after we arrived.

Q. And the Ament's are not blood relations of Terry, are they? A. They are not.

Q. Now, during the time that you had Terry at Mrs. Ament's, Mr. and Mrs. Ament were living there, were
20 they not? A. They were.

Q. They also had a boarder or a roomer?

A. They had one roomer, yes, sir.

Q. And you and Terry were living there?

A. Yes, sir.

Q. And the daughter of Mrs. Ament was about to have a baby, was she not? A. Yes, sir.

Q. She did have it? A. Yes.

Q. And she was living there? A. She was just there for a couple of weeks.

30 Q. Now, you were here and do you remember what Mrs. Ament said on that? She said she was there for a month at one time.

A. She was in hospital part of the time.

Q. Now, you are going to put that in.

MR. LOCHEAD: Mrs. Ament said the same thing, that her daughter went to hospital and she was brought back from the hospital.

MR. BROCK: To look after all these persons, including the baby, was a lady 70 years of age.

40 HIS LORDSHIP: 69.

MR. BROCK: Pardon me, 69. That is true, is it?

MR. LOCHEAD: Is my friend giving evidence?

MR. BROCK: I am having a time getting it out of this man.

MR. LOCHEAD: That is the only way you are going to get it, is to give it yourself, Mr. Brock.

MR. BROCK: Q. Now, since October 1st, 1945, during the time until December 26, 1946, you had Terry at Port Austin except when Mrs. McKee had Terry; is that right?

A. That is right, Mr. Brock.

Q. Now, when he went to Port Austin or when you took him to Port Austin on October 1st, 1945, who was the housekeeper there, was that Mrs. Piffer?

A. Mrs. Piffer.

10 Q. And then, during that time you had also a Miss Eastman, I mean after Mrs. Piper left you had Miss Eastman? A. In May and June of 1946.

Q. Now, you told us yesterday it was in the spring of 1946 when Miss Eastman came?

A. That is right.

Q. June is not in the spring. A. I said May and June.

Q. When did you say May and June?

A. Just a minute ago.

20 Q. Now then, you also said yesterday that Miss Eastman was there as a housekeeper. She was not.

A. She was.

Q. Now, you told us yesterday that you accepted her on the recommendation of Joshua Stever, is that right?

A. I did, Mr. Brock.

Q. And you called him a stableman?

A. He was a gardener.

Q. You called him a stableman? A. Gardener.

Q. Now, have you a stable of horses there?

30 A. No, I had one horse, Mr. Brock, and Mr. Stever was the outside man who looked after the garden and yard.

Q. Had you ever seen Miss Eastman before?

A. I had not.

Q. You had not? A. I had not.

Q. Before she came to Port Austin?

A. I had not.

Q. Yet she was the housekeeper who was looking after Terry? A. My daughter Joanne was there, Mr.

40 Brock.

Q. And she had three children of her own?

HIS LORDSHIP: Mr. Brock, Mr. McKee in chief said very frankly that cooks were hard to get and when he had to choose between a cook and an outside man he kept the cook and under the circumstances of employment prevailing in 1945 you would have done the same thing.